



May 24, 2017

Review, MS-1530
U.S. Department of the Interior
1849 C Street NW.
Washington, DC 20240.

[Docket No. DOI-2017-0002]
Review of Certain National Monuments Established Since 1996

Public Comment Re: Bears Ears National Monument

Dear Secretary Zinke,

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.2 million members and supporters nationwide, including over 10,000 in Utah alone, I write to express our unwavering support for Bears Ears National Monument (Bears Ears). In addition to nearly 15,000 NPCA members and supporters who submitted comments to the Department of Interior in support of Bears Ears during this month's public comment period (Docket No. DOI-2017-0002), I too ask that you uphold the current monument designation, maintaining the boundaries and protections as established in the proclamation from President Obama on December 28, 2016.

NPCA hosts over two dozen regional offices around the nation, including in Salt Lake City, UT. Whether in Utah or in Washington, D.C., NPCA has been an active supporter of the Bears Ears Inter-Tribal Coalition and their allies. This has been the case throughout the campaign to permanently protect public lands in Southeast Utah, as the Bears Ears Inter-Tribal Coalition and their allies developed and proposed a national monument that would provide significant and lasting protections for the antiquities, sacred sites and traditional uses of this area. We believe President Obama's use of the Antiquities Act to protect Bears Ears was wholly appropriate and justified to ensure this rich cultural and natural landscape of Southeast Utah is protected for the enjoyment of all Americans while safeguarding many of its sacred cultural sites from looting and destruction.

No Legal Authority for the President to Rescind or Resize a Monument under the Antiquities Act

The current review by the Department of Interior of 27 national monuments, including Bears Ears, does not provide any legal avenue for the president to rescind or reduce in size any national monument. No president has the legal authority to rescind or materially modify any national monument proclaimed under the Antiquities Act.

President Trump's Executive Order on the Review of Designations Under the Antiquities Act signed on April 26, 2017 directs the Secretary of the Department of Interior to provide the Office of Management and Budget and President Trump with potential recommendations "for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order." Section 1 of the order

broadly talks about public input, economic growth, the “original objectives” of the Antiquities Act and “appropriately balanc[ing] the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” At the time of President Trump’s Executive Order, you explained that you will consider whether monuments should be “rescinded, resized, [or] modified.” When asked if the president has the power to do so unilaterally, you suggested that it is “untested” whether the president has the unilateral power to rescind a monument, but that “it’s undisputed the president has the authority to modify a monument.”¹

We urge you, Secretary Zinke, to re-examine your understanding of this issue. The president has no power unilaterally to rescind a national monument designation and no power to modify or “resize” a monument. We attach a memorandum from the law firm of Arnold & Porter Kaye Scholer (“APKS Memo”) (Appendix A) and a law review article by four professors (the “Squillace Article”) (Appendix B) who collectively conclude that no such power of rescission exists and no such power to make material changes exists. The only result of the current review ordered by President Trump, therefore, would be to make recommendations to Congress, asking that Congress draft legislation to make whatever revocations or modifications your office and the president believe justified.

In summary, whether or not the president may make a rescission or modification of a monument designation does not turn on any power granted the president by the U.S. Constitution. This issue instead concerns administration of federally owned land, and the Constitution gives that power exclusively to Congress. U.S. Const., Property Clause, Art. IV, § 3. Whether or not the president has the power unilaterally to revoke a national monument designation therefore depends on whether that power is expressly or by implication delegated to the president by an Act of Congress. The Antiquities Act of 1906 authorizes the president to create national monuments on land owned or controlled by the federal government.² The act says nothing about a president having the power to abolish a national monument or to reduce the size of a monument. And no such power may be implied. This is so for several reasons:

First, the U.S. Attorney General opined long ago that the Antiquities Act could not be interpreted to imply that a president has the power to revoke a national monument’s designation. No president has attempted to revoke such a designation since that Opinion was issued in 1938.³

Second, in the more than 100 years since the adoption of the Antiquities Act, Congress has adopted a comprehensive legislative portfolio to govern federally owned land, into which the Antiquities Act was folded and in relation with which it must be interpreted. One of those statutes was the Federal Land Policy and Management Act (FLPMA), adopted in 1976.⁴

- Congress there in effect adopted the Attorney General’s interpretation that no revocation power should be read into the Antiquities Act by implication. When Congress legislates on a subject, “[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning.”⁵ Yet in FLPMA, Congress did not “affirmatively act to change the meaning” of the Antiquities Act as interpreted by the Cummings Opinion. Congress therefore in effect adopted that interpretation.

¹ <https://www.whitehouse.gov/the-press-office/2017/04/25/press-briefing-secretary-interior-ryan-zinke-executive-order-review>

² 54 U.S.C. § 320301(a).

³ “Proposed Abolishment of Castle Pinckney Nat’l Monument,” 39 Op. Atty. Gen. 185 (1938).

⁴ 43 U.S.C. § 1704 *et seq.*

⁵ *Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir. 1998) (addressing legislative action after earlier Attorney General interpretation); *see also, to the same effect, e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 and n.66 (1982) (considering whether rights should be implied under a statute); *Souter v. Jones*, 395 F.3d 577, 598 (6th Cir. 2005).

- Far from acting to change the interpretation that no revocation power should be implied, one of Congress' purposes in FLPMA was to reassert its own authority over federal land withdrawals and to limit to express delegations the authority of the Executive Branch in this regard.⁶ Accordingly, Congress there repealed a number of prior statutes that had authorized Executive Branch withdrawals and revocations, and Congress also repealed a Supreme Court decision that had found an implied power in the presidency to withdraw land from oil exploration.⁷ The Supreme Court has made clear that, to harmonize different statutes, “a specific policy embodied in a later federal statute should control our construction of [a prior one], even though it had not been expressly amended.”⁸ This is particularly so when the later statute is a comprehensive legislative scheme.⁹ FLPMA was the very sort of “comprehensive legislative scheme” that requires interpreting the Antiquities Act to harmonize with FLPMA, and it would not be harmonious to read into the Antiquities Act an implied authorization for a president to revoke or materially modify a prior monument's designation. *See* APKS Memo, pages 8-14; Squillace Article, pages 3-5.

Moreover, while you have stated that the power to modify a monument is supposedly uncontested, that is not the case. A president does not have the power to do in part what he cannot do in full. It is true that some presidents did modify the size of monument designations before FLPMA, but the background of those modifications demonstrates that FLPMA withdrew the underpinnings of that authority. In 1935, the Solicitor of the Department of the Interior was asked to opine about the president's power to reduce in size monuments created under the Antiquities Act. The Solicitor concluded that that power did exist based on the *Midwest Oil* decision.¹⁰ When Congress expressly repealed *Midwest Oil*, however, the basis for the Solicitor's decision was removed. *See* Squillace at 6-8. In FLPMA, Congress made clear when it adopted that statute that it was “specially reserv[ing] to the Congress *the authority to modify* and revoke withdrawals for national monuments created under the Antiquities Act.”¹¹ Accordingly, no president has attempted to modify the size of a national monument since FLPMA any more than to revoke such a designation altogether.

Part of Bears Ears is on land administered by the U.S. Forest Service, but that is of no consequence for these issues. There is no greater implied presidential authority to create or revoke or modify Forest Service-administered land than there is for land administered by any other agency. That is so because the implied authority recognized in *Midwest Oil* had not been limited to any particular category of federal land, and Congress' repeal of that decision was similarly broad. Indeed, more than one of the statutes repealed by FLPMA was directly related to withdrawals of land for use as national forests.¹²

In the Executive Order of April 26, 2017, President Trump asked for a review of whether the designations “appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” In the unlikely event that a court might find that a president does have the power to rescind or modify a monument designation, however, such a power can be no broader than the Antiquities Act into which the power is implied. No such balancing test is found in the Antiquities Act. The balancing standard laid out in President Trump's Executive Order on April 26, 2017 is therefore inapplicable and must not be relied on by your office in making any recommendations.

Legitimate Implementation of the Antiquities Act

As you well know, the Antiquities Act states:

⁶ *See* 43 U.S.C. § 1704 (a)(4).

⁷ *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

⁸ *See United States v. Romani*, 523 U.S. 517 (1998).

⁹ *See Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 97 (1981); *see also Hi-Lex Controls Inc. v. Blue Cross*, 2013 WL 228097 (E.D. Mich. Jan. 22, 2013) at *3.

¹⁰ Opinion of the Solicitor M27657 (Jan. 30, 1935).

¹¹ House Rep. No. 94-1163 (May 15, 1976), at 9 (*emphasis added*).

¹² *See* Pub. Law No. 74-597, § 704, repealing, *inter alia*, 16 U.S.C. § 471 (Presidential authority to withdraw or revoke withdrawals for national forests) and 53 Stat. 653 (Presidential authority to withdraw national forest lands for municipal water supply protection).

That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected...¹³

Quite simply, under this criteria of the law, it is without question that the Bears Ears National Monument fully qualifies for protection under the Antiquities Act. That is:

- The lands included in the Bears Ears are entirely federal lands and do not impact the just over 12,600 acres of private land within its boundaries.
- The region hosts numerous historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest, including 100,000 or more archeological and cultural sites.
- As documented by the previous Department of Interior, the Obama Administration went through painstaking steps to ensure appropriate boundaries were considered for the final national monument designation at Bears Ears. In fact, the designation ultimately fell short of expectations of NPCA, and is only 84,500 acres larger than the legislative proposal presented by the Utah Congressional delegation in 2016 (discussed below).

The protection of the Bears Ears landscape as a whole is critical to the protection of each component or object within the national monument. It is crucial that these historic sites, sacred tribal grounds and remarkable natural resources remain connected under the national monument designation. Further, it is in keeping with the Antiquities Act that these objects must receive “proper care and management,” and in order to do so, the landscape and the resources it hosts must be considered in its entirety, with an appropriate all-encompassing management plan.

Landscape scale conservation promotes natural resiliency by providing more opportunity for collaboration between communities and land management agencies, improved science and stronger policy. Intact landscapes also provide more effective wildlife corridors, build climate resiliency and bring diverse communities together—just as we’ve seen in the Bears Ears. The Bears Ears National Monument provides an opportunity to maintain and promote public land protections at a scale that enhances the cultural and natural conservation values of the region.

In addition, the Bears Ears National Monument boundaries, as established, secure protection for national parks both inside and adjacent to the monument, including Canyonlands National Park, Natural Bridges National Monument and Glen Canyon National Recreation Area. Realistically, protection for national parks can only be assured when their adjacent lands are well managed. Simply, the Bears Ears National Monument provides better security for the management of Southeastern Utah’s public lands, including its national parks.

A Robust Public Process Leading to Bears Ears Monument Designation

Some have falsely characterized Bears Ears National Monument as a “midnight monument”—proclaimed without adequate public input or consultation with local elected officials. U. S. Secretary of the Department of Interior Sally Jewell adhered to a thoughtful and thorough process of public input laid out by President Obama and her predecessor, Ken Salazar, in the “America’s Great Outdoors Report: A Promise to Future Generations.”¹⁴ While there is clearly no legal obligation under the Antiquities Act to consider public input, this report¹⁵ stated:

¹³ See 54 U.S.C. § 320301.

¹⁴ https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/ago_report_-_report_only_2-7-11.pdf

¹⁵ See pages 2-4 and page 63, Goal B and Recommendation 8.4

Action Item 8.4a: Implement a transparent and open approach to new national monument designations tailored to engaging local, state, and national interests. (DOI and USDA)

Any recommendations should focus on historic and natural features and cultural sites on federal lands that deserve protection under the 1906 Antiquities Act. In the process of making recommendations, the following should be considered:

- public input from local, state, and national interests;
- transparency in development and execution of the designation;
- valid existing rights on federal lands; and
- criteria enumerated in law.

This guidance set the stage for the Obama Administration's consideration of any and all national monument proposals, including Bears Ears. NPCA participated in numerous public meetings held by the Obama Administration of various national monument proposals.

On July 16, 2016, members of the Obama Administration, including U.S. Secretary of the Interior Sally Jewell and U.S. Department of Agriculture Under Secretary for Natural Resources and Environment Robert Bonnie hosted a public meeting to hear about community visions for the management of Southeastern Utah's public lands, including Utah Congressman Rob Bishop and Jason Chaffetz's Public Lands Initiative and the Bears Ears Inter-Tribal Coalition's proposal to designate a new national monument. An estimated 1,500 members of the public, including NPCA members and staff, attended the event in Bluff, UT, with supporters outnumbering opposition by nearly 2:1. There have been multiple rallies in support of Bears Ears, including the most recent on May 6, 2017 when nearly 2,000 people congregated at the Utah State Capitol to show support for the national monument prior to your visit to the state. What has been clear throughout the various efforts to protect the Bears Ears landscape is that people care deeply about this place, and for a diversity of reasons—from recreation to tribal history.

Public conversations like those in Bluff in 2016 were just the most recent opportunities for the public to provide input on management of public lands in Southeastern Utah. Tribal communities, members of the conservation community, the broader public and various elected and agency leaders had long advocated for additional protections for the landscape encompassed by the Bears Ears National Monument. This includes a proposal in the 1930's by then Secretary of the Interior Harold Ickes for an Escalante National Monument that would encompass 4.5 million acres of federal land, including much of the landscape now incorporated into Bears Ears National Monument, Canyonlands National Park, Natural Bridges National Monument, Capitol Reef National Park and Grand Staircase Escalante National Monument. In 2010, former Utah Senator Bob Bennett initiated a public lands legislative effort in San Juan County that was more recently followed by a nearly three and a half year Public Lands Initiative process led by Congressmen Bishop and Chaffetz from 2013-2016.

During the process initiated by Senator Bennett in 2010, Utah Navajo began mapping out their lands of interest, which eventually morphed into their proposal for a Bears Ears National Conservation Area and wilderness designations. Around the same time, a grassroots coalition began advocating for a Greater Canyonlands National Monument, which also encompassed much of this same landscape surrounding the existing Canyonlands National Park. In addition, for several decades, dating to the 1980's, NPCA has advocated for an expanded Canyonlands National Park boundary through our Canyonlands Completion campaign (described below).

In 2013, Congressmen Bishop and Chaffetz initiated their Public Lands Initiative (PLI), and the various protection efforts were incorporated into yet another public process. Hundreds of public meetings were held with stakeholders attempting to hammer out common ground in some counties, while others, like San Juan County, shunned outside input and came to agreements behind closed doors. Ultimately, many groups and organizations walked away from the PLI process by 2016 due to a lack of transparency and communication from the delegation, disregard for tribal voices and proposals, repeated delays and ultimately draft legislation that failed to represent compromises agreed upon by stakeholders. Instead, the legislation included language that rolled back protections on much of Southeastern Utah's public lands.

During the three-year PLI process, the Utah delegation, local elected officials and a variety of stakeholders met with the Obama Administration and the Department of Interior (DOI) to engage them in a balanced solution for protecting this area. Secretary Jewell, however, was very clear that she would take no action while the PLI process proceeded. To the dismay of some monument proponents, Secretary Jewell was not willing to move faster than the Utah delegation. Despite delays in that process, she was loyal to the pursuit of legislation. She was, however, interested in hearing from Native American Tribes and local stakeholders on all sides of the issues, and made the effort to listen through an extended visit to Utah, meetings in Washington D.C. and elsewhere.

In addition to the America's Great Outdoors Report in 2011 noted above, a detailed memo developed from documents obtained by the House Committee on Oversight and Government Reform in 2017 outlines many of the extensive meetings and communication between the DOI and local stakeholders regarding the Bears Ears process. This memo demonstrates the long process that this region underwent for permanent protection consideration—from years of the PLI to the more recent administrative options. This memo is also attached to these comments as Appendix C. The memo irrefutably demonstrates repeated contacts between the Utah Congressional delegation and the Department of Interior, as well as public engagement in both the PLI and the proposed protection of Bears Ears. In fact, the designated Bears Ears National Monument boundaries are clearly a compromise that incorporated input from the PLI process, which reflected a proposal from San Juan County. The final monument boundaries fall far short of the 1.9 million acres proposed by the Inter-Tribal Coalition.

Utah Dine Bikeyah and the Inter-Tribal Coalition, who led the effort to protect Bears Ears, first through the Utah Public Lands Initiative and then through Presidential Proclamation, have documented a timeline of their efforts to work with the Utah Congressional delegation. This documentation is provided in Appendix D. The tribes ultimately withdrew from the PLI process due to continually missed deadlines and lack of communication and respect for the efforts of sovereign nations.

Finally, NPCA is also attaching our letters of support for the national monument proposal, as well as our letters regarding the PLI, demonstrating our longstanding support of and engagement in the protection of the Bears Ears region. These letters are included in Appendix E.

NPCA's Commitment to Protecting the Bears Ears Landscape

NPCA has a long-standing commitment to protect a significant portion of the Bears Ears area of northern San Juan County, adjacent to Canyonlands National Park. Since 1988, we have publicly advocated for expanded protections of the natural and cultural resources around Canyonlands National Park through our Canyonlands Completion campaign. Our vision includes extending protections from the existing national park boundary to the natural erosional boundary of the Wingate cliffs—this better incorporates the whole basin, as well as adjacent cultural and natural resources, while removing some of the external threats to park resources.

NPCA's Canyonlands Completion area closely aligns with the Bears Ears National Monument boundary to the east and south of Canyonlands National Park (see map attached in Appendix F). To the east of Canyonlands, Bears Ears National Monument includes Lockhart Basin up to the rim of the Wingate cliffs, which will help curb irresponsible off-road vehicle use and remove the threat of resource extraction within the viewshed of Canyonlands National Park. Potential resource development within Lockhart Basin as well as on the rim of the basin threatens not only the views from within the park, but dark night skies, natural sounds, air quality and water resources—all critical resources and values of our national park.

To the south of Canyonlands, NPCA's proposal for Canyonlands Completion also includes extending protections to incorporate Beef Basin, with its substantial archeological and cultural sites, as well as areas near Newspaper Rock State Historic Monument and Indian Creek. Just as in NPCA's proposal, these contiguous cultural sites are now incorporated into the larger protected landscape of the Bears

Ears National Monument. Given their proximity to and connection with National Park System sites, it is our hope that the National Park Service (NPS) will help shape the management of this adjacent landscape to prevent impacts from incompatible uses while also sharing their expertise in visitor management and interpretation.

For the past several years, NPCA has advocated for the protection of these critical southeast Utah public lands through both the process initiated by Senator Bennet of Utah (served 1992-2010) and the PLI. NPCA consistently supported an open, transparent process to evaluate the larger shared landscape in order to determine what designations are most appropriate for maintenance of the remote, adventure-filled area, its pristine landscapes, and its extraordinary cultural values. Unfortunately, much of the Bears Ears area, including around the national park sites, has long suffered from looting and destruction of cultural sites, irresponsible off-road vehicle use, energy and mineral extraction and other threats from inappropriate use and development.

Despite our consistent and good faith participation throughout the PLI process including participating in many meetings with other local stakeholders, NPCA was dismayed by the draft legislation released in January 2016, and the resulting lack of communication from the delegation. Overall, the PLI was a missed opportunity to protect and preserve some of America's greatest national parks and their surrounding public lands. Instead, the draft legislation would have subjected much of eastern Utah's public lands to excessive development and off-road vehicle use, while weakening environmental protections and including a significant number of unacceptable policy provisions, many of which were never discussed or agreed upon during discussions about the PLI.

Because Congress failed to act in a timely manner to protect this incredible area, the designation of a Bears Ears National Monument through the Antiquities Act was the best opportunity for the protection of this region. This included not only the San Juan County portion of our Canyonlands Completion area, but the larger landscape around Natural Bridges National Monument and Glen Canyon National Recreation Area in Southeast Utah. When it became clear that the PLI had failed, but the threats to this area remained, NPCA put our full support behind the Bears Ears National Monument designation effort being led by the Inter-Tribal Coalition. Along with our more than one million members and supporters, we expressed our support to the Inter-Tribal Coalition as well as the Obama Administration. In fact, we delivered over 15,000 letters from our members asking President Obama to designate a Bears Ears National Monument.

Utahans Support Bears Ears National Monument

The American people, including NPCA's members, overwhelmingly oppose efforts to roll back protections for the parks, monuments, marine sanctuaries and other public lands and waters they love and value. According to Colorado College's 2017 Conservation in the West Poll, 80percent of western voters support keeping existing national monuments protections in place while only 13percent of western voters supported removing protections for existing monuments. This poll reinforces other surveys that document widespread public opposition to congressional attacks on new parks. In a December 2014 Hart Research Poll, 90percent of Americans supported the permanent protection of some public lands, monuments, wildlife refuges and wilderness.

Counter to false assertions that "locals" do not support Bears Ears National Monument, a poll of Utah voters conducted by Benenson Strategy Group and Public Opinion Strategies and released in August 2016 showed 55percent supported the idea of protecting Bears Ears as a national monument. Another poll conducted by Public Opinion Strategies in May 2016 showed that 71percent of Utahans support a Bears Ears National Monument as compared to 20percent who oppose it¹⁶. And most recently, a poll conducted by Public Opinion Strategies and released in May 2017 further confirms Utahans support with 64percent in favor of keeping Bears Ears as a national monument and at its current size¹⁷.

¹⁶ http://www.creationjustice.org/uploads/2/5/4/6/25465131/utah_national_monument_key_findings_memo.pdf

¹⁷ <http://utahdinebikeyah.org/wp-content/uploads/2017/05/Utah-Statewide-Key-Findings-Final-5-22-17.pdf>

Economic Benefits of Bears Ears National Monument

Bears Ears National Monument and the landscape it encompasses is an economic driver for Utah, as well as the outdoor recreation industry. Although economic data is not yet available for Bears Ears given its recent designation as a national monument, comparisons can be made with other Utah national parks and monuments¹⁸. For example, in 2016, 776.2 thousand park visitors spent an estimated \$47.6 Million in local gateway regions while visiting Canyonlands National Park. These expenditures supported a total of 722 jobs, \$18.1 million in labor income, \$32.4 million in value added, and \$57.6 million in economic output in local gateway economies surrounding Canyonlands National Park. In 2016, 101.8 thousand park visitors spent an estimated \$6.4 million in local gateway regions while visiting Natural Bridges National Monument. These expenditures supported a total of 87 jobs, \$2.4 million in labor income, \$4.1 million in value added, and \$7.1 million in economic output in local gateway economies surrounding Natural Bridges National Monument. And finally, in 2016, 3.2 million park visitors spent an estimated \$235.2 million in local gateway regions while visiting Glen Canyon National Recreation Area. These expenditures supported a total of 3.3 thousand jobs, \$88.4 million in labor income, \$157 million in value added, and \$272.5 million in economic output in local gateway economies surrounding Glen Canyon National Recreation Area. Without question, it is clear based on the above noted 2016 NPS data on park impacts to local economies¹⁸ that the landscape surrounding Bears Ears is important to local community economies.

It was extremely disappointing and a huge financial loss to the State of Utah when the Outdoor Industry Association (OIA) made the decision to pull the Outdoor Retailer Show from Salt Lake City. Amy Roberts, from OIA, was quoted saying, “Over the last 20 years, Outdoor Retailer has been in Salt Lake City, generating more than \$45 million in annual economic impact. Further, the outdoor recreation economy in Utah adds more than \$12 billion in direct spending, supports 122,000 jobs in the state, pays \$3.6 billion in salaries and wages, and contributes more than \$856 million in state and local tax revenue every year. We believe these numbers and our values will be of great interest to other states in the West.”¹⁹

The OIA decision was in large part a response to the Utah State Legislature passing a resolution along with united support from Utah’s Governor and U.S. Congressional delegation asking President Trump to rescind Bears Ears National Monument. The economic impact of losing the Outdoor Retailer Show will be felt widely including at local restaurants, hotels and other businesses. According to the show’s owners, Emerald Expositions, it has been drawing 40,000 visitors and \$45 million to Salt Lake City each year.²⁰

Uses and Opportunities within Bears Ears

The Bears Ears region not only provides ample prospects for economic gains, but also supports diverse recreation and exploration opportunities. The Bureau of Land Management (BLM)²¹ and U.S. Forest Service (USFS)²² both acknowledge in their fact sheets about the national monument that the region maintains both existing (at the time of the proclamation) uses and potential new uses. More specifically that the designation preserves current uses of the land, including tribal access and traditional collection of plants and firewood, off-highway vehicle recreation, hunting and fishing, legal grazing, military training operations, and utility corridors and infrastructure.

The USFS and BLM have clearly laid out the parameters for uses of the national monument in their agency fact sheets. Both agencies clearly state that the Bears Ears National Monument designation does not change activities such as hunting and fishing, existing grazing permits, current timber management for the purposes of restoration and forest health, as well as numerous tribal uses of the

¹⁸ <https://www.nps.gov/subjects/socialscience/vse.htm>

¹⁹ <http://www.prnewswire.com/news-releases/outdoor-industry-governor-herbert-disagree-on-public-lands-protections-utahs-recreation-economy-300409323.html>

²⁰ <http://www.sltrib.com/home/4952414-155/outdoor-retailer-convention-leaving-utah>

²¹ <https://www.blm.gov/programs/national-conservation-lands/national-monuments/utah/bears-ears/fast-facts>

²² <https://www.fs.fed.us/sites/default/files/bear-ears-fact-sheet.pdf>

land (ceremonial and traditional uses) and more. In addition, this region boasts various recreation opportunities, from rock climbing to horseback riding. The USFS captured it well by stating:

Bears Ears is a popular hunting, fishing, climbing, hiking and off-highway vehicle destination. Today, cyclists and motorists can follow the path of 19th-century Mormon pioneers along the rugged Hole in the Rock Trail. The Dark Canyon recreation area on the Manti-La Sal National Forest attracts hikers and backpackers and Elk Ridge and the Abajo Mountains draw hunters from across the world.²²

Bears Ears Deserves Adequate Resources and Management

Recognizing the aforementioned opportunities for recreation and more at Bears Ears National Monument, the site is already drawing visitors from around the globe. People are coming to experience the areas' rich cultural history dating back tens of thousands of years with countless sites including petroglyph and pictograph panels, lithic scatters and ancestral dwellings. People are also coming to recreate in the area's natural playground with winding, sheer walled canyons, unique red rock formations, remote desert mesas, higher elevation forests of ponderosa pine and aspen, expansive views, and incredible solitude.

Bears Ears National Monument requires an active, informed and coordinated visitor management plan to protect its cultural and natural resources. This will require multi-stakeholder input led by your land management agencies, the U.S. Department of Agriculture and the Bears Ears Commission, adequate funding and a commitment from the administration for protections. If a management plan and rangers to implement that plan are not put in place quickly, impacts and damage to the natural resources and cultural sites will increase with visitation. This will be true no matter what type of designation (or lack thereof) exists for the landscape. The management plan presents an opportunity for BLM and USFS to work effectively together, ideally with shared expertise from the NPS, to the benefit of the landscape. Again, USFS captures this well in their fact sheet:

The Forest Service and BLM will jointly prepare a national monument management plan that will address the actions necessary to protect the resources identified in the monument. The plan will be developed with maximum public involvement, including tribal, local and State governments, permit holders, and other stakeholders. To ensure management decisions reflect tribal expertise and traditional and historical knowledge, a Bears Ears Commission comprised of one elected officer from each of the five tribes that formed the Inter-Tribal Coalition to support permanent protection of the Bears Ears will be established. In addition, the Forest Service and BLM will establish a Federal Advisory Committee to provide advice and information regarding the development of the management plan. National monument management plans typically address many important priorities, including:

- Enhancing recreational opportunities
- Protecting important cultural resources
- Restoring fish and wildlife habitat²²

In addition to the agency collaboration noted in the proclamation, to address concerns regarding tribal, local and broader public input, the proclamation for Bears Ears National Monument was explicit about including public input into the management plan, as well as an explicit role for tribes. According to the proclamation, the "Secretaries shall provide for maximum public involvement in the development of that plan including, but not limited to, consultation with federally recognized tribes and State and local governments. In the development and implementation of the management plan, the Secretaries shall maximize opportunities, pursuant to applicable legal authorities, for shared resources, operational efficiency, and cooperation". It goes on to say, "The Secretaries, through the BLM and USFS, shall establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.) to provide information and advice regarding the development of the management plan and, as appropriate, management of the monument. This advisory committee shall consist of a fair and balanced representation of interested stakeholders, including State and local governments, tribes,

recreational users, local business owners, and private landowners.”²³ Once again, the protection of Bears Ears remains in keeping with the 2011 America’s Great Outdoors Report’s commitments noted above, as well as the current administration’s interest in federal efficiencies.

With regard to tribal participation in the monument management process, a Bears Ears Commission was established through the proclamation “to provide guidance and recommendations on the development and implementation of management plans and on management of the monument.” The commission includes one representative each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe. The commission is intended to be a partner with the federal land management agencies and the Secretaries of Interior and Agriculture are instructed to carefully consider and incorporate the traditional and historical knowledge and expertise of the commission.

Conclusion

NPCA urges the administration to maintain the current protections of the Bears Ears National Monument. We strongly recommend that your office not make any recommendations to rescind the national monument or alter the boundaries. Instead, we ask your office and the noted land management agencies to provide the leadership necessary to move forward with a reasonable plan that embraces this sacred place in a way that honors tribal nations, addresses local enthusiasm for the monument and allows the growing outdoor recreation industry to flourish. Bears Ears National Monument is a unique, rich landscape worthy of its current designation and wholly in keeping with the intention and written purpose of the Antiquities Act. NPCA strongly supports tribal involvement in managing the national monument through the Bears Ears Commission. It is imperative that the region is managed to end the destruction and looting of this intensely spiritual and culturally significant area, maintain recreation opportunities and protect this landscape from inappropriate uses and development.

On May 2, 2017 over 450 organizations signed a letter (Appendix G) to your office in support of the Antiquities Act and expressed deep concerns with the April 26th Executive Order from President Trump. In this letter, the community, including NPCA notes:

Since its enactment over a hundred years ago, the Antiquities Act has been one of our nation’s most critical conservation tools for preserving our nation’s most important public lands and waters. Our national parks and monuments and other protected public lands and waters unite all Americans by protecting our shared American heritage for future generations to enjoy. The sheer diversity of historic, cultural, and natural treasures that have been protected by the Antiquities Act is the reason why hundreds of groups representing sportsmen, cultural heritage organizations, evangelicals, conservation, recreation businesses, historic preservation, social justice, and many others all oppose efforts to undermine our national monuments and view an attack on any one national monument as an attack on them all.

To call into question whether our national heritage is worth protecting will have lasting repercussions on the preservation of our public lands for generations to come. Eight Republican and eight Democratic presidents have designated 157 national monuments under the authority of the Antiquities Act. As noted above, this includes nationally significant cultural, historical, and natural sites such as, the Grand Canyon and Acadia National Parks, Statue of Liberty and Muir Woods National Monuments, and the Chesapeake and Ohio Canal National Historical Park. In fact, many of our nation’s most popular and iconic national parks were first protected using the Antiquities Act. More recently, the Antiquities Act has help safeguard and honor more diverse stories in the National Park System through the designations of Stonewall, Belmont-Paul Women’s Equality, and César E. Chávez National Monuments. We urge you to imagine what our country would be like without these incredible places, protected just as they should be.

²³ <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument>

Thank you for your consideration of these comments and those of our members and supporters. We call on your administration to maintain and support all of our country's national monuments, including the Bears Ears National Monument in order to help heal these ancestral lands, while leaving a lasting legacy for all Americans.

Sincerely,



Theresa Pierno
President and CEO

Enclosures

- Appendix A** Arnold & Porter Kaye Scholer Memo: The President Has No Power Unilaterally to Abolish or Materially Change a National Monument Designation Under the Antiquities Act of 1906
- Appendix B** "National monuments: Presidents can create them, but only Congress can undo them" by Nicholas Bryner, Eric Biber, Mark Squillace and Sean B. Hecht
- Appendix C** Bears Ears Monument Democratic Memo
- Appendix D** Timeline of Tribal Engagement in Protection
- Appendix E** NPCA letters regarding the Utah PLI and Bears Ears
- Appendix F** Map of NPCA Canyonlands Completion proposal overlay with Bears Ears
- Appendix G** 450 group letter of support

Appendix A

Arnold & Porter Kaye Scholer Memo: The President Has No Power Unilaterally to Abolish or Materially Change a National Monument Designation Under the Antiquities Act of 1906

**The President Has No Power Unilaterally to Abolish
or Materially Change a National Monument
Designation Under the Antiquities Act of 1906**

We have been asked by our client, National Parks Conservation Association, whether a sitting President may unilaterally abolish or materially change a national monument that was established by an earlier President under the authority of the Antiquities Act of 1906. The question arises in the context of President Trump’s Executive Order of April 26, 2017 directing the Secretary of the Interior to conduct a review of all national monuments designated since 1996 which are at least 100,000 acres or which the Secretary determines were designated without adequate public input.¹ The Executive Order directs the Secretary to report back to the President and make recommendations “for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.” Section 1 broadly talks about public input, economic growth, the “original objectives” of the Antiquities Act and “appropriately balance[ing] the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.”

President Trump stated when he issued the Order that “the Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it’s time that we ended this abusive practice.”² That review will cover some 25 national monuments designated or expanded since 1996.

President Trump said he was particularly eager to change the boundary of Bears Ears National Monument in Utah.³ President Obama designated that monument primarily at the request of Native American tribes, declaring that the “paleontological resources [there] are among the richest and most significant in the United States” and that the area’s “petroglyphs and pictographs capture the imagination with images dating back at least 5,000 years.”⁴ President Trump, however, referred to this monument designation as a “massive federal land grab,”⁵ which suggests that the federal government did not already own the land before that event. However, the federal government has owned that land since long before Utah became a state in 1896. While the federal government made land grants to the new State for various purposes,⁶ the new State’s constitution, as Congress required, “forever disclaim[ed] all right and title” to federal

¹ *Review of Designations Under the Antiquities Act*, Exec. Order 13792, 82 Fed. Reg. 20429 (May 1, 2017).

² Juliet Eilperin, “Trump orders a review of newer national monuments,” *Washington Post*, April 27, 2017, at A3.

³ *Id.*

⁴ *Establishment of the Bears Ears National Monument*, Proclamation No. 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017).

⁵ Eilperin, at A3.

⁶ See Utah Enabling Act, ch 138, § § 6-12, 28 Stat. 107 (1894), <https://archives.utah.gov/research/exhibits/Statehood/1894text.htm>.

lands within the State’s boundaries.”⁷ Under these circumstances, it is unclear from whom the federal government supposedly “grabbed” this land.

Secretary Ryan Zinke explained at the time of President Trump’s Executive Order that he will be considering whether monuments should be “rescinded, resized, [or] modified.” When asked if the President has the power to do so unilaterally, he said it is “untested” whether the President has the unilateral power to rescind a monument but that “it’s undisputed the President has the authority to modify a monument.”⁸

It is apparent, in part from the President’s terminology (e.g., that Bears Ears was a federal “land grab”) and the Secretary’s description of the law, that they have been influenced by a March 2017 report written for the American Enterprise Institute by John Yoo and Todd Gaziano entitled “Presidential Authority to Revoke or Reduce National Monument Designations.” Those authors argue there that President Trump has the authority to rescind or revoke the creation of national monuments by President Obama and that the President also has the authority to reduce the size of national monuments. They also argue that the Antiquities Act only authorized, or at least that Congress only intended that it be used to designate, relatively small areas as monuments around human archeological sites.

It is beyond the scope of this memorandum to discuss the merits of particular national monument designations or the fact that President Obama established procedures to assure there was significant public outreach and input before each of his monument designations. The purpose of this memorandum is instead to address the Yoo and Gaziano arguments about the scope and nature of the monuments Congress authorized to be designated in the Antiquities Act and their arguments that a President may unilaterally rescind or materially reduce the size of a monument previously established. After evaluating the U.S. Constitution, relevant statutes and other relevant authorities, we have concluded that Yoo and Gaziano are wrong about these matters.

Executive Summary

The authority granted by the Antiquities Act is not limited to small areas around human archeological sites.

President Trump’s Executive Order and accompanying Administration statements suggest that the “original” objective of the Antiquities Act was limited to permitting the President to set aside small areas of land around human archeological sites. Monument designations outside this constrained scope are called “abuses.” This is the view for which Yoo and Gaziano argue and this (“abuses”) is how they describe large monuments protecting natural sites. However, they base their argument - - not on the final language of the statute - - but on early bills rejected by Congress. This is a novel way to understand a statute.

⁷ *Id.*, § 3.

⁸ “Press Briefing by Secretary of Interior Ryan Zinke to Review the Designations Under the Antiquities Act,” Office of the Press Secretary, White House, April 25, 2017.

In fact, in the five or six years before the Antiquities Act was adopted, there were two camps seeking such a statute, but they had different concepts of what it should authorize. Archeologists wanted a narrow statute to protect archeological sites. The Department of the Interior wanted a statute authorizing the protection of large scenic areas, this being before creation of the National Park System. In the end, all sides agreed upon compromise language that became the Antiquities Act. The compromise added a clause authorizing protection of areas having “historic or scientific interest” and provided that the monument “shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁹

Almost immediately after the Act’s adoption, President Theodore Roosevelt established the Grand Canyon National Monument, protecting 818,000 acres, and almost immediately someone challenged the legality of that monument’s designation under the Act. But the U.S. Supreme Court rejected the challenge in *Cameron v. United States*.¹⁰ Referring to the clause which formed the basis of the compromise, the Court explained that the Grand Canyon “is an object of unusual scientific interest” and went on to explain its scientific importance and natural wonders.

Every court thereafter has reached the same conclusion as to other monuments challenged as natural rather than archeological. It is not surprising that larger areas are required to protect natural wonders than the areas required to protect archeological sites. Congress provided flexibility concerning the size of each monument in order to allow for differences based on what is being protected. Referring to larger monuments as “abuses” ignores the text of the statute and the history behind its adoption.

The President has no authority to revoke or materially reduce previously designated monuments.

In our system of Government, Presidents have no power other than that granted to them by the U.S. Constitution or by an Act of Congress. The issue here does not invoke any power granted the President by the U.S. Constitution. The issue instead concerns administration of federally owned land, and the Constitution gives that power exclusively to Congress. U.S. Const., Property Clause, Art. IV, § 3. Whether or not the President has the power unilaterally to revoke a national monument designation therefore depends on whether that power is expressly or by implication delegated to the President by an Act of Congress. The Antiquities Act of 1906 authorizes the President to create national monuments on land owned or controlled by the federal government.¹¹ The Act says nothing about a President’s having the power to abolish a national monument or to reduce the size of a monument. The question is therefore whether such a power may be implied.

Contrary to the arguments of Yoo and Gaziano, reading a revocation power into that statute by implication would be improper. This is so for several reasons.

⁹ 54 U.S.C. § 320301(a) and (b).

¹⁰ 252 U.S. 459 (1920).

¹¹ 54 U.S.C. § 320301(a).

First, the U.S. Attorney General opined long ago that the Antiquities Act could not be interpreted to imply that a President has the power to revoke a national monument's designation. No President has attempted to revoke such a designation since that Opinion was issued in 1938.

Second, Yoo and Gaziano fail to recognize that in the more than 100 years since the adoption of the Antiquities Act, Congress has adopted a comprehensive legislative scheme to govern federally owned land, into which the Antiquities Act was folded and in relation with which it must be interpreted. One of those statutes was the Federal Land Policy and Management Act ("FLPMA"), adopted in 1976.¹² Congress there in effect adopted the Attorney General's interpretation that no revocation power should be read into the Antiquities Act by implication. Thereafter, it would be particularly improper to interpret the Antiquities Act as implying that the President has the power to revoke a monument designation.

Third, as to those national monuments which were made part of the National Park System, Congress has mandated that the power to manage those special places "shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress."¹³ Revoking the designation of such a national monument and pulling it out of the National Park System would certainly be in derogation of the reasons such special places were added to that System.

Secretary Zinke, however, stated that a President has the authority to modify a monument, and President Trump stated he is eager to modify the boundaries of Bears Ears National Monument. If they are thinking that the President would have the power to modify that monument in a material way that would undermine the protection of the resources for which it was created, they are wrong. A President does not have the power to do in part what he may not do in full. While there were some instances before 1976 of Presidents changing the boundaries of monuments, no President has attempted to do so after FLPMA was adopted.

The revocation of the designation of a national monument or the material reduction in its size, and particularly a monument that is part of the National Park System, is therefore beyond the power of a President acting without Congress. The interpretation proffered by Yoo and Gaziano would therefore, if acted upon, result in a usurpation of congressional powers by the Executive Branch.

* * * * *

I. The Antiquities Act of 1906.

The Nineteen Century saw substantial western expansion of the United States, and it was the federal government that acquired the land making that expansion possible. While that government had acquired land since its founding, the government substantially increased its holdings by such events as the Louisiana Purchase of 1803, the Oregon Compromise with

¹² 43 U.S.C. 1704 *et seq.*

¹³ 54 U.S.C. § 100101(b)(2).

England in 1846 and the treaty resolving the Mexican-American War in 1848.¹⁴ No sooner had the public land domain been established in the Eighteenth Century than a policy of disposing of the land had been initiated.¹⁵ The federal government transferred nearly 816 million acres of public domain land to private ownership and 328 million acres to the States as they became established.¹⁶

By late in the Nineteenth Century, however, demands grew to “withdraw” some public lands from that available for sale, grant or other disposition so it could be retained by the federal government for conservation and similar purposes. The first permanent federal land reservation was Yellowstone National Park, created in 1872, and in 1891 the President was given power to withdraw forest lands and prevent their disposal.¹⁷ The federal government retained for the benefit of all Americans a large part of the land that government had acquired, totaling approximately 600 million acres.¹⁸

In recognition of the slow process of enacting federal legislation, Congress adopted the Antiquities Act in 1906 to empower the President to protect some of that federal land promptly. That Act, as now codified, provides:

(a) The President may, in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.¹⁹

President Theodore Roosevelt was the first to use that Act, establishing 18 national monuments, including Devil’s Tower, Muir Woods, Mount Olympus (the predecessor to Olympic National Park) and the Grand Canyon. Almost every President thereafter has designated additional national monuments. These monuments were created to provide for the enjoyment and use of the federal lands by the American people.

¹⁴ See generally “Natural Resources Land Management Act,” S. Rep. No. 94-583 (hereafter the “Senate Report”) at 27-32; Carol Hardy Vincent et al., Cong. Research Serv., *Federal Land Ownership: Overview and Data* 5 (2014), available at <https://fas.org/sgp/crs/misc/R42346.pdf>.

¹⁵ See Senate Report, at 28.

¹⁶ Kristina Alexander and Ross W. Gorte, Cong. Research Serv. RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention* 5 (2007), available at <https://fas.org/sgp/crs/misc/RL34267.pdf>.

¹⁷ 17 Stat. 326; 26 Stat. 1095.

¹⁸ Alexander and Gorte, at 9.

¹⁹ 54 U.S.C. § 320301(a) and (b).

II. The President's Authority under the 1906 Act is not Limited to Protecting Small Areas Around Archeological Sites, As Yoo and Gaziano Argue and the Administration Claims.

Yoo and Gaziano argue that Congress only intended in the Antiquities Act to authorize the President to create monuments to protect small areas around human archeological sites. They concede that the Act's "final language covered more than antiquities" and that "small scenic areas" were contemplated. But they argue that "the statute's title, drafting history and historical context" should convince Presidents "to follow the text and spirit of the original law."²⁰ And they repeatedly call Presidential proclamations that did not do so "abuses." This is a novel way of understanding a statute passed by Congress, i.e., by looking to earlier versions of a bill not adopted rather than to the "final language" of the act. Contrary to these arguments, the Act by its terms and as understood by Congress at the time authorizes protection of large areas containing natural resources, and the size of the protected area depends on the resources being protected.

It is true that the national monument authority is generally referred to as the "Antiquities Act," but that is so because parts of the statute did in fact address only antiquities, such as by prohibiting their looting.²¹ But the legislative history of the portion of the Act relating to monuments, as well as its text, makes clear that that authority was not limited to protecting antiquities. There was considerable disagreement about what became this part of the Act in the years before its adoption. There were two views: archeologists and the Smithsonian Institution wanted a law providing for the protection only of archeological sites in order to address Western legislators' concerns over the size and scope of protected areas, as Yoo and Gaziano say.²² The Department of the Interior and some members of Congress, on the other hand, wanted a law that would provide protection as well for large "scenic beauties and natural wonders and curiosities".²³ While Yoo and Gaziano say Congress had rejected bills the Department supported, they omit the fact that bills limited as the archeologists wanted had also failed.²⁴ This process went on for 5 years. Finally, Professor Edgar Hewett drafted a compromise bill that was adopted without much further ado and became the relevant part of the Antiquities Act of 1906.²⁵

Yoo and Gaziano rely largely on a work by Ronald Lee for their recital of the history of the Act.²⁶ Here is what he says about the final bill:

Senator Lodge's bill, in its earlier versions, had been limited to historic and prehistoric antiquities and made no provision for protecting natural areas. At some point in his

²⁰ Yoo and Gaziano, at 3.

²¹ See 54 U.S.C. § 32032.

²² See Ronald F Lee, "The Antiquities Act, 1900-1906," in *The Story of the Antiquities Act* (National Park Service, March 15, 2016), www.nps.gov/archeology/pubs/lee/Lee_CH6.htm at 2-3.

²³ *Id.*, at 3.

²⁴ *Id.*, at 4-6.

²⁵ *Id.*, at 7.

²⁶ Yoo and Gaziano, at nn. 3, 5, 6 and 8.

discussions with government departments, Hewett was persuaded, probably by officials of the Interior Department, to broaden his draft to include the phrase “other objects of historic or scientific interest.” ... As it later turned out, the single word “scientific” in the Antiquities Act proved sufficient basis to establish ... national monuments preserving many kinds of natural areas, ...²⁷

One of the first monuments to be designated under that Act was President Theodore Roosevelt’s 1908 creation of Grand Canyon National Monument, which covered 818,000 acres.²⁸ The holder of a mining claim to land on the south rim of the Canyon challenged the legality of the monument designation because it supposedly exceeded the President’s power under the Antiquities Act. In *Cameron v. United States*, the Court rejected that argument.²⁹ The mining claim, the Court explained, included the trailhead of the famous Bright Angel Trail “over which visitors descend to and ascend from the bottom of the canyon.”³⁰

The act under which the President proceeded empowered him to establish reserves embracing “objects of historic or scientific interest.” The Grand Canyon, as stated in his proclamation, “is an object of unusual scientific interest.” It is the greatest eroded canyon in the United States, if not the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.³¹

In 1976, the Supreme Court again was called on to address this issue and again explained that the Antiquities Act is not limited to archeological areas. In *Caepfert v. United States*, the Court upheld President Truman’s creation of a national monument at Devil’s Hole, Nevada, as a habitat for a species of fish found only there. The fish, said the Court, were “objects of historic or scientific interest” within the meaning of that clause in the Antiquities Act.³² Similarly, when President Carter designated several national monuments in Alaska based in part on their natural resources, opponents challenged the designations in court, making the same arguments about the supposedly constrained nature of places that could be so designated. The district court resoundingly rejected those arguments, based in part on *Cameron* and *Caepfert* as well as on the court’s analysis of the Act’s legislative history.³³ Reciting the same legislative history discussed above, the court found that Mr. Hewett’s compromise bill, which contained the clause “other objects of historic or scientific interest” and which had become law, “was indeed intended to enlarge the authority of the President.” Moreover, the court concluded that “matters of scientific

²⁷ Lee, at 9.

²⁸ *Establishment of Grand Canyon National Monument*, Proclamation No. 794, 35 Stat. 2175 (1908).

²⁹ 252 U.S. 459 (1920). President Roosevelt also designated the 60,000 acre Petrified Forest National Monument in 1906, the 10,000 Chaco Canyon National Monument in 1907 and the almost 640,000 acre Mount Olympus National Monument in 1909. See Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. Rev. 473, 490 n. 92 (2003).

³⁰ 252 U.S. at 455 and n.1.

³¹ *Id.*, at 455-56.

³² 426 U.S. 128, 141-42 (1976).

³³ *Anaconda Copper Co. v. Andrus*, No. A79-161, civil, 14 ERC 1853 (D, Alaska July 1, 1980).

interest which involve geological formations or which may involve plant, animal or fish life are within this reach of the presidential authority under the Antiquities Act.”³⁴

The Administration’s claims that large monuments are “abuses” of the Antiquities Act and that it was only intended to apply to small areas are simply wrong. In setting limits on the size of areas to be protected, the Act merely imposed the requirement that the president designate the “smallest area compatible with the proper care and management of the objects to be protected.” From the very beginning, that Act was used to protect large areas such as the Grand Canyon and Mount Olympus, which later became Olympic National Park. It is obvious that more land is needed to protect natural resources such as these areas than to protect isolated archeological sites. It is therefore simply not true that the areas protected under the Act in its early years were limited to small areas of a few hundred acres.

III. The President Has No Implied Power to Revoke a National Monument Created under the Antiquities Act.

Because the Antiquities Act does not expressly empower or prohibit Presidents to revoke national monuments, proponents of such a power argue that that power may be read into the Act by implication. Gaziano and Yoo and some members of Congress argue that the President has many implied powers and that this is merely one such power. They are wrong.

Yoo and Gaziano argue for a general proposition that “the authority to execute a discretionary government power usually includes the power to revoke it -- unless the original grant expressly limits the power of revocation.”³⁵ They argue that this supposedly follows from the principle that each “branch of government can reverse its earlier actions using the same process originally used.”³⁶ They point to the President’s power to fire Executive Branch officials even after the Senate has confirmed the appointment and to the President’s power over foreign treaties. The problem with that argument is that it ignores the source of the original power. There is no government-wide general rule on this subject; each source of power must be examined to assess whether a power to revoke previous actions should be implied. As former President and Supreme Court Chief Justice Taft stated:

The true view of the Executive function is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to *some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise*. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof.³⁷

³⁴ *Id.*

³⁵ Yoo and Gaziano, at 7.

³⁶ *Id.*, at 8.

³⁷ William Howard Taft, OUR CHIEF MAGISTRATE AND HIS POWERS 139-40 (1916), available at <https://archive.org/stream/ourchiefmagistra00taftuoft#page/n5/mode/2up> (*emphasis added*).

Accordingly, when Yoo and Gaziano point to the power of the President to fire Executive Branch officers and to revoke treaties with foreign governments, they are pointing to powers found in the Constitution's grant of executive authority to the President. The Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America." U.S. Const., Art. II, § 1. It is reasonable to conclude that that broad grant includes the power to revoke what has been done. As Justice Taft explained:

The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.³⁸

The same may be said of specific powers granted the President, including that to make treaties with foreign countries. *See* U.S. Const., Art. II, § 2.

But here we are not dealing with the scope of the powers granted the Executive Branch under the Constitution. Here, we are dealing instead with the power over federal lands, and the Constitution grants that power, not to the President, but exclusively to the Congress. The Property Clause of the Constitution provides that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" *Id.*, Art. IV, § 3, Cl. 2.

For the President to have the power to revoke a monument designation under the Antiquities Act, therefore, the issue is whether that Act of Congress, not the Constitution's grant of the executive power to the President, may be interpreted to imply the unstated power to revoke a monument designation thereunder.³⁹

This is a question on which the Attorney General of the United States, Homer S. Cummings, ruled in the negative.⁴⁰ In 1938, President Franklin Roosevelt asked Attorney General Cummings for a formal Legal Opinion as to whether the President could rescind former President Coolidge's designation of the Castle Pinckney National Monument under the Antiquities Act. After careful study, Attorney General Cummings explained that the answer was "no."

A duty properly performed by the Executive under statutory authority has the validity and sanctity which belong to the statute itself, and, unless it be within the terms of the power conferred by that statute, the Executive can no more destroy his own authorized work, without some other legislative

³⁸ *Id.*

³⁹ Yoo and Gaziano also argue as an analogy that the Executive Branch has the power to repeal regulations adopted under discretionary statutory authority. But that authority is recognized, in the words of Justice Taft, as "included within such express grant as proper and necessary to its exercise." *Id.* That says nothing about whether such implied power should also be implied in the Antiquities Act.

⁴⁰ Attorney General Cummings held a PhD and law degree from Yale University. He served from 1933 until 1939. (*See* U.S. Department of Justice, *Attorneys General of the United States*, at <https://www.justice.gov/ag/bio/cummings-homer-still>)

sanction, than any other person can. To assert such a principle is to claim for the Executive the power to repeal or alter an act of Congress at will.⁴¹

The Attorney General’s Opinion explained that under long-standing precedent “if public lands are reserved by the President for a particular purpose under express authority of an act of Congress, the President is thereafter without authority to abolish such reservation.”⁴² Since the Cummings Opinion, no President has attempted unilaterally to rescind a national monument.⁴³ Rather, as contemplated by the Cummings Opinion, when some monuments have been abolished, it has been Congress that has done so by legislation.⁴⁴

Yoo and Gaziano argue that the Cummings Opinion was “poorly reasoned” and “erroneous as a matter of law.”⁴⁵ But their description of that opinion is not a fair characterization of Attorney General Cumming’s reasoning. For example, they claim he found binding an 1862 opinion when he merely relied on its reasoning and they then describe that earlier opinion unfairly. But what Cummings found significant about that earlier case is that, as in the case of the Antiquities Act, the statute in question had authorized the President to reserve lands but had said nothing about his power to undo the reservation made. And the earlier Attorney General had concluded that such power could not be implied. In reaching the same conclusion as to the Antiquities Act, Attorney General Cummings distinguished statutes that expressly authorize the President to revoke reservations.

The gaping hole in the Yoo and Gaziano arguments, however, is that they ignore or minimize the importance of the fact that, since 1906, Congress has adopted a comprehensive system of laws to govern federally-owned lands, and that the Antiquities Act must be understood and interpreted as part of that legal structure. Statutes covering the same subject matter are interpreted together. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000). Two particular later statutes are relevant here. First, in 1976, Congress adopted the Federal Land Policy and Management Act (“FLPMA”).⁴⁶ Second, in 1916,

⁴¹ “Proposed Abolishment of Castle Pinckney Nat’l Monument,” 39 Op. Atty. Gen. 185, 185 (1938), *citing* Opinion by Attorney General Edward Bates to the Secretary of the Interior, 10 U.S. Op. Atty. Gen. 359 (1862). As a general matter, opinions of the Attorney General are binding on the Executive Branch offices that request them until they are overruled or withdrawn. *See Pub. Citizen v. Burke*, 655 F. Supp. 318, 321–22 (D.D.C. 1987) (“As interpreted by the courts, an Attorney General’s opinion is binding as a matter of law on those who request it until withdrawn by the Attorney General or overruled by the courts.” (citation and internal quotations omitted)), *aff’d*, 843 F.2d 1473 (D.C. Cir. 1988); *cf.* Trevor W. Morrison, *Stare Decisis in the Office of Legal Counsel*, 110 Colum. L. Rev. 1448, 1472, 1482–84 (2010).

⁴² 39 Op. Atty. Gen. at 186–87.

⁴³ Squillace, at 553.

⁴⁴ Congress has abolished a number of National Monuments by legislation. *See, e.g.*, Wheeler National Monument in 1950 (64 Stat. 405); Shoshone Cavern in 1954 (68 Stat. 98); Papago Saguaro in 1930 (46 Stat. 142); Old Kasaan in 1955 (69 Stat. 380); Fossil Cyad in 1956 (70 Stat. 898); Castle Pinkney in 1956 (70 Stat. 61); Father Millet Cross in 1949 (63 Stat. 691); Holy Cross in 1950 (64 Stat. 404); Verendrye in 1956 (70 Stat. 730), and Santa Rosa Island in 1946 (60 Stat. 712).

⁴⁵ Yoo and Gaziano, at 5.

⁴⁶ 43 U.S.C. 1704 *et seq.*

Congress adopted the National Park System Organic Act, to which Congress added significant provisions in 1970 and 1978.

When FLPMA was adopted in 1976, Congress legislated against the backdrop of the Antiquities Act providing that the President could create national monuments and the Cummings Opinion that the President could not revoke national monuments. There is evidence that Congress was aware of the Cummins Opinion, which was reported in one of the studies leading to FLPMA's passage.⁴⁷ But in any event, when Congress legislates on a subject, "[C]ongress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning."⁴⁸ Yet in FLPMA, Congress did not "affirmatively act[] to change the meaning" of the Antiquities Act as interpreted by the Cummings Opinion. Congress therefore in effect adopted that interpretation.

Moreover, the Supreme Court has made clear that, to harmonize different statutes, "a specific policy embodied in a later federal statute should control our construction of [a prior one], even though it had not been expressly amended."⁴⁹ This is particularly so when the later statute is a comprehensive legislative scheme.⁵⁰ FLPMA was the very sort of "comprehensive legislative scheme" that requires interpreting the Antiquities Act to harmonize with FLPMA. It would not be harmonious with FLPMA to read into the Antiquities Act an implied authorization for a President to revoke a prior monument's designation because in FLPMA, one of Congress' purposes was to reassert its own authority over federal land withdrawals and to limit to express delegations the authority of the Executive Branch in this regard.

FLPMA was the result of a years-long re-examination and reorganization of laws governing management of federal lands, including the creation of reservations or "withdrawals" of land for particular purposes.⁵¹ In 1964, Congress had created The Public Land Law Review Commission to undertake that reexamination, finding in part that there were many statutes governing federal lands "which are not fully correlated with each other."⁵² The Commission obtained extensive studies and finally issued its report in 1970.⁵³ One of its recommendations was that "[d]elegations of the congressional authority should be specific, not implied,"

⁴⁷ See Charles F. Wheatley, Jr., "Study of Withdrawals and Reservations of Public Domain Lands" (Public Land Law Review Commission 1969), at 17, 264.

⁴⁸ *Bledsoe v. Palm Beach County Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir. 1998) (addressing legislative action after earlier Attorney General interpretation); see also, to the same effect, e.g., *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 and n.66 (1982) (considering whether rights should be implied under a statute); *Souter v. Jones*, 395 F.3d 577, 598 (6th Cir. 2005).

⁴⁹ See *United States v. Romani*, 523 U.S. 517 (1998).

⁵⁰ See *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 97 (1981); see also *Hi-Lex Controls Inc. v. Blue Cross*, 2013 WL 228097 (E.D. Mich. Jan. 22, 2013) at *3.

⁵¹ Pub. Law No. 94-579, codified at 43 U.S.C. § 43 U.S.C. § 1701 *et seq.* As the Senate Report accompanying the bill that became FLPMA explained, Congress had long recognized "a need to review and reassess the entire body of law governing Federal lands." Senate Report, at 34.

⁵² See 78 Stat. 982 (Sept. 19, 1964).

⁵³ Public Land Law Review Commission, "One Third of the Nation's Land: A Report to the President and the Congress" (1970); see also Senate Report, at 32-36.

Congress followed that recommendation, declaring in FLPMA that “it is the policy of the United States that ... the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action.”⁵⁴ Accordingly, Congress expressly repealed a large number of statutes previously authorizing the Executive Branch to make withdrawals of federal land and overturned a court decision implying such power.⁵⁵ But FLPMA did not repeal the Antiquities Act. This was no oversight; the decision to leave that Act in effect was noted in the House Report.⁵⁶ And while Congress gave the Secretary of the Interior some powers to make, modify or revoke withdrawals, FLPMA provided that the Secretary did not have power to “revoke or modify” any Antiquities Act monument designation.⁵⁷

The House Report made clear that there were to be no more implied powers to withdraw lands or to revoke previous withdrawals; only Congress was to have those powers except as expressly delegated.

With certain exceptions [including under the Antiquities Act], H.R. 13777 will repeal all existing law relating to executive authority to create, modify, and terminate withdrawal and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, *It would also specially reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act* These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.”⁵⁸

Specifically as to national monuments, therefore, just as Attorney General Cummings concluded, while the President would continue to have the power to establish national monuments under that Act, only Congress would be empowered to revoke a monuments designation. Any other understanding of the Antiquities Act would be contrary to Congress’

⁵⁴ *Id.*, codified at 43 U.S.C. § 1704(a)(4).

⁵⁵ See Pub. Law No. 74-597, § 704 (“Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (*U.S. v. Midwest Oil Co.*, 236 U.S. 459) and the following statutes and parts of statutes are repealed: ...”).

⁵⁶ “The exceptions, which are not repealed, are contained in the Antiquities Act (national monuments),” House Report, at 29.

⁵⁷ 43 U.S.C. §1714 and § 1714(j). Those sections speak in terms of the authority of the Secretary of the Interior to make, modify or revoke withdrawals, but it is relevant to note in understanding that section that at the time of FLPMA’s adoption, the President had delegated to the Secretary of the Interior all of the President’s “authority ... vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.” *Delegating to the Secretary of the Interior the Authority of the President to Withdraw or Reserve Lands of the United States for Public Purposes*, Exec. Order 10355, 17 Fed. Reg. 4831 (May 28, 1952); Wheatley, at 379 (that Executive Order, as of 1969, “is now the controlling authority”).

⁵⁸ House Report, at 9 (*emphasis added*).

purpose and comprehensive legislative scheme in FLPMA to eliminate all implied delegations of authority to the Executive Branch to withdraw or revoke withdrawals.

Yoo and Gaziano nevertheless suggest that a President could revoke a prior designation if the later President determines it was based on a factual error, is no longer a valid designation due to changed circumstances, or is “illegally or inappropriately large.”⁵⁹ But there already exists a remedy under such circumstances; those same arguments can be made to Congress.⁶⁰

The conclusion that only Congress may revoke a national monument designation applies doubly to those national monuments created under the Antiquities Act and administered by the National Park Service (“NPS”).⁶¹ Ten years after adoption of the Antiquities Act, Congress adopted the Organic Act of 1916 creating the National Park System.⁶² Congress there mandated that the fundamental purpose of the System is to “conserve the scenery, natural and historic objects, and the wild life in the System units ... [and] leave them unimpaired for the enjoyment of future generations.”⁶³ In 1970, Congress adopted amendments to that Organic Act which made clear that national monuments administered by NPS are part of that System and are to be protected as such.⁶⁴ And Congress provided that the entire National Park System is a “cumulative expression[] of a single national heritage.”⁶⁵ In 1978, not satisfied that the Executive Branch had gotten the message, Congress returned to this subject and added the mandate that

the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, *except as directly and specifically provided by Congress.*⁶⁶

Congress clearly did not intend that a President could unilaterally revoke the designation of a national monument that is part of the National Park System without Congress’ directly and

⁵⁹ Yoo and Gaziano, at 9, 10.

⁶⁰ As described in noted 4 above, on several occasions Congress has abolished national monuments by legislation.

⁶¹ For example, recent Proclamations establishing national monuments as part of the National Park System have provided “The Secretary of the Interior (Secretary) shall manage the monument through the National Park Service, pursuant to applicable legal authorities, consistent with the purposes and provisions of this proclamation.” *Establishment of the Belmont-Paul Women’s Equality National Monument*, Proclamation No. 9423, 81 Fed. Reg. 22505 (Apr. 15, 2016).

⁶² Now codified at 54 U.S.C. §100101(a).

⁶³ *Id.*

⁶⁴ See Pub. L. No. 91-383 (National Park System General Authorities Act), codified in this regard at 54 U.S.C. §§ 100102(2), 100501 (defining “National Park System” to include any area administered by the Director of NPS, including for “monument” purposes). Those monuments are as fully covered by general regulations protecting the entire System as are any national parks created by Congress. See 36 C.F.R. §1.2 (NPS regulations apply to federally owned land administered by NPS).

⁶⁵ 54 U.S.C. § 100101(b)(1)(B).

⁶⁶ *Id.*, § 100101(b)(2) (*emphasis added*).

specifically so providing. Such an act would certainly be in derogation of the values and purposes for which the monument had previously been established.⁶⁷

All of this simply goes further to establish that in the 1970s Congress adopted the Cummins Opinion's conclusion that no President may unilaterally revoke the establishment of any national monument. Such a revocation would require an act of Congress.

IV. For the Same Reasons, No President May Unilaterally Materially Reduce the Size of a National Monument.

President Trump's Executive Order of April 26, 2017 and Secretary Zinke's comments also raise the issue whether a President may unilaterally reduce the size of a national monument. Yoo and Gaziano argue that that power is to be implied into the Antiquities Act even if the President does not have the power to revoke a monument's designation.⁶⁸ But there is no merit to this claim, which is simply an alternative formulation of the baseless argument that a President may unilaterally abolish a national monument. Any attempts by the President to remove land or features that would undermine the purposes and values for which the monument was originally created would be a partial revocation of the monument. The President does not have the power to do in part what he cannot do in full.

Yoo and Gaziano rely on the fact that Presidents have issued a handful of proclamations that reduced the size of some national monuments. Whatever the understanding of this power might have been before the 1970s legislation discussed above, however, they cite not one example of any such reduction after FLPMA was adopted in 1976. The last time such a thing happened was in 1963, when President Kennedy issued a Proclamation to remove certain lands from Bandelier National Monument in New Mexico.⁶⁹ In FLPMA, Congress reasserted its authority over such matters. As discussed above, Congress made clear that it was "specially reserv[ing] to the Congress *the authority to modify* and revoke withdrawals for national monuments created under the Antiquities Act."⁷⁰

It is unclear whether a President could make non-material adjustments to monument boundaries without congressional authorization. But President Trump does not appear to be planning to test that question when he says he is eager to change the boundaries of Bears Ears National Monument. It is at least clear that any reduction in the size of the monument or other modification that undermines the purpose and values for which it was created could be made only by Congress.

⁶⁷ For example, the Presidential Proclamation designating Bears Ears National Monument explains that it is intended to preserve features of the lands that are sacred to Native Americans, paleontological resources, and a wide variety of vegetation. *Establishment of the Bears Ears National Monument*, Proclamation No. 9558, 83 Fed. Reg. 1139 (Jan. 5, 2017).

⁶⁸ Yoo and Gaziano, at 14-17.

⁶⁹ *Revising the Boundaries of the Bandelier National Monument*, Proclamation No. 3539, 28 Fed. Reg. 5407 (May 27, 1963).

⁷⁰ House Report, at 9 (*emphasis added*).

V. Conclusion.

For over one hundred years, the Antiquities Act has allowed Presidents to create national monuments and preserve worthy lands for the enjoyment of all Americans and future generations. There are today national monuments in 31 states. For all Americans, they offer recreational opportunities and preserve a heritage of beauty, scientific marvels, and human achievement. But the Antiquities Act and subsequent legislation reserved to Congress, which has Constitutional authority over public lands, the sole power to revoke such a designation or materially to reduce the monument's size.

Robert Rosenbaum, Andrew Shipe, Lindsey Beckett, Andrew Treaster, Jamen Tyler

May 3, 2017

Appendix B

“National monuments: Presidents can create them, but only Congress can undo them” by Nicholas Bryner, Eric Biber, Mark Squillace and Sean B. Hecht

THE CONVERSATION

Academic rigor, journalistic flair



National monuments: Presidents can create them, but only Congress can undo them

April 27, 2017 9.49pm EDT

Bears Ears National Monument, Utah. Bob Wick, BLM/Flickr, CC BY

On April 26 President Trump issued an executive order calling for a review of national monuments designated under the Antiquities Act. This law authorizes presidents to set aside federal lands in order to protect “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.”

Since the act became law in 1906, presidents of both parties have used it to preserve 157 historic sites, archaeological treasures and scenic landscapes, from the Grand Canyon to key landmarks of the civil rights movement in Birmingham, Alabama.

President Trump calls recent national monuments “a massive federal land grab,” and argues that control over some should be given to the states. In our view, this misrepresents the law. National monuments can be designated only on federal lands already owned or controlled by the United States.

The president’s order also suggests that he may consider trying to rescind or shrink monuments that were previously designated. Based on our analysis of the Antiquities Act and other laws, presidents do not have the authority to undo or downsize existing national monuments. This power rests with Congress, which has reversed national monument designations only 10 times in more than a century.

Contests over land use

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Trump's executive order responds to opposition from some members of Congress and local officials to national monuments created by Presidents Bill Clinton and Barack Obama. It calls for Interior Secretary Ryan Zinke to review certain national monuments created since 1996 and to recommend "Presidential actions, legislative proposals, or other actions," presumably to shrink or eliminate these monuments. The order applies to monuments larger than 100,000 acres, as well as others to be identified by Secretary Zinke.

Sean B. Hecht

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When a president creates a national monument, the area is "reserved" for the protection of sites and objects there, and may also be "withdrawn," or exempted, from laws that would allow for mining, logging or oil and gas development. Frequently, monument designations grandfather in existing uses of the land, but prohibit new activities such as mineral leases or mining claims.

Zinke said that he will examine whether such restrictions have led to "loss of jobs, reduced wages and reduced public access" in communities around national monuments. Following Secretary Zinke's review, the Trump administration may try either to rescind monument designations or modify them, either by reducing the size of the monument or authorizing more extractive activities within their boundaries.



Opponents of the proposed Bears Ears National Monument in Monticello, Utah during a visit by then-Interior Secretary Sally Jewell, July 14, 2016. AP Photo/Rick Bowmer

Two of the most-contested monuments are in Utah. In 1996 President Clinton designated the Grand Staircase-Escalante National Monument, a region of incredible slot canyons and remote plateaus. Twenty years later, President Obama designated Bears Ears National Monument, an area of scenic rock formations and sites sacred to Native American tribes.

Utah's governor and congressional delegation oppose these monuments, arguing that they are larger than necessary and that presidents should defer to the state about whether to use the Antiquities Act. Local officials have raised similar complaints about the Gold Butte National Monument in Nevada and the Katahdin Woods and Waters National Monument in Maine, both designated by Obama in late 2016.

What the law says

The key question at issue is whether the Antiquities Act gives presidents the power to alter or revoke decisions by past administrations. The U.S. Constitution gives Congress the power to decide what happens on "territory or other property belonging to the United States." When Congress passed the Antiquities Act, it delegated a portion of that authority to the president so that administrations could act quickly to protect resources or sites that are threatened.

Critics of recent national monuments argue that if a president can create a national monument, the next one can undo it. However, the Antiquities Act speaks only of designating monuments. It says nothing about abolishing or shrinking them.

Two other land management statutes from the turn of the 20th century – the Pickett Act of 1910 and the Forest Service Organic Act of 1897 – gave the president authority to withdraw other types of land, and also specifically stated that the president could modify or revoke those actions. These laws clearly contrast with the Antiquities Act's silence on reversing past decisions.



Ruins at Chaco Culture National Historic Park, New Mexico, originally protected under the Antiquities Act by President Theodore Roosevelt in 1907 to prevent looting of archaeological sites. Steven C. Price/Wikipedia, CC BY-SA

In 1938, when President Franklin D. Roosevelt considered abolishing the Castle-Pinkney National Monument – a deteriorating fort in Charleston, South Carolina – Attorney General Homer Cummings

advised that the president did not have the power to take this step. (Congress abolished the monument in 1951.)



Congress enacted a major overhaul of public lands law in 1976, the **Federal Land Policy and Management Act**, repealing many earlier laws. However, it did not change the Antiquities Act. The House Committee that drafted the 1976 law also made clear in legislative reports that it intended to prohibit the president from modifying or abolishing a national monument, stating that the law would “specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.”

The value of preservation

Many national monuments faced vociferous local opposition when they were declared, including Jackson Hole National Monument, which is now part of **Grand Teton National Park**. But over time Americans have come to appreciate them.

Indeed, Congress has converted many monuments into national parks, including **Acadia**, the **Grand Canyon**, **Arches** and **Joshua Tree**. These four parks alone attracted over 13 million visitors in 2016. The aesthetic, cultural, scientific, spiritual and economic value of preserving them has long exceeded whatever short-term benefit could have been derived without legal protection.

As Secretary Zinke begins his review of Bears Ears and other national monuments, he should heed that lesson, and also ensure that his recommendations do not overstep the president’s lawful authority.

 [Federalism](#) [national monuments](#) [Trump administration](#) [Antiquities Act](#) [public lands](#) 

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Appendix C

Bears Ears Monument Democratic Memo

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

MEMORANDUM

April 13, 2017

To: Democratic Members of the Committee on Oversight and Government Reform

Fr: Democratic Staff

Re: Documents Obtained by Oversight Committee Refute Republican Claims That Obama Administration Did Not Consult on Bears Ears Monument Designation

On December 28, 2016, President Barack Obama exercised executive authority granted by Congress pursuant to the Antiquities Act to designate Bears Ears in Utah a national monument. Since that designation, various members of the Utah delegation have stated publicly that the Obama Administration failed to adequately consult with local stakeholders, native tribes, or Members of Congress during this process and that there was little local support for the designation.

On December 29, 2016, the day after President Obama's designation, Rep. Jason Chaffetz, the Chairman of the Committee on Oversight and Government Reform, sent a letter to Sally Jewell, the Secretary of the Department of the Interior, requesting by January 20, 2017, a wide range of documents relating to the designation decision. On January 17 and 18, 2017, the Department produced four disks containing 1,361 documents with a total of 11,104 pages in response to the Chairman's request.

These documents appear to contradict Republican claims and indicate that the Obama Administration engaged in a lengthy consultation process with the local stakeholders, tribes, and the Utah delegation.

I. REPUBLICAN CLAIMS OF INADEQUATE CONSULTATION

Utah Governor Gary Herbert has made the following statements regarding the Bears Ears monument designation process:

I am deeply disturbed by what has resulted from a troubling process. ... [T]he president has misused his authority under the Antiquities Act and violated assurances made by his Interior Secretary to take into account local concerns before making a monument designation.¹

¹ Utah Governor Gary Herbert, *Governor News and Media Page* (Dec. 28, 2016) (online

It is the problem of someone unilaterally making a decision without taking into account the positions and concerns of local people.²

Why did not the president and his administration work with Congressman Bishop and Congressman Chaffetz and say, let us help you? It's not the use of the Antiquities Act that's the problem. It's what seems to be a continued escalating abuse of the Antiquities Act ... And it's just a way to circumvent the people. It's a way to circumvent the Congress.³

This decision ignores the will of the majority of Utahns. It disregards the desire of Native American groups who count these lands as their heritage to co-manage this culturally important area. It overlooks the unanimous opposition of Utah's statewide elected officials and Utah's entire congressional delegation.⁴

The Speaker of the Utah House of Representatives, Greg Hughes, made a similar statement alleging a lack of outreach to local residents and tribes:

Not only is that clearly not the case here, but this administration has had no real conversations with those who will be affected by this designation, let alone any study of what "antiquities" they are attempting to protect.⁵

On January 5, 2017, Utah Senator Mike Lee stated in response to the Administration's claim that it took unprecedented steps to elevate the voices of Native peoples that "nothing could be further from the truth."⁶

at www.utah.gov/governor/news_media/article.html?article=20161228-1).

² *Native Americans Prepare to Battle Trump Over Utah National Monument*, McClatchy (Mar. 20, 2017) (online at www.mcclatchydc.com/news/politics-government/white-house/article139721783.html).

³ *All Things Considered*, NPR (Dec. 29, 2016) (online at www.npr.org/2016/12/29/507436648/obama-s-newly-designated-national-monuments-upset-some-lawmakers-and-constituent).

⁴ Utah Governor Gary Herbert, *Governor News and Media Page* (Dec. 28, 2016) (online at www.utah.gov/governor/news_media/article.html?article=20161228-1).

⁵ Utah House of Representatives, *Newsroom Page* (Dec. 28, 2016) (online at <https://house.utah.gov/2016/12/28/media-statement-speaker-greg-hughes-statement-about-bears-ears-national-monument-designation/>).

⁶ United States Senator Mike Lee, *Speeches Page* (Jan. 5, 2017) (online at www.lee.senate.gov/public/index.cfm/speeches?ID=94B2FF5E-B083-41F3-8AA2-39763E511C57).

II. DOCUMENTS OBTAINED BY THE OVERSIGHT COMMITTEE

The documents obtained by the Oversight Committee contradict Republican statements alleging inadequate input from local communities and instead demonstrate a lengthy process of consultation.

The documents show that the Department of the Interior consulted with the Utah delegation on an ongoing basis since 2013 and made continuous efforts to keep the lines of communication open. The documents also show that as late as December 21, 2016, the Governor's office complimented staff at the Department on the time and attention that they were devoting to this issue.

The documents also show that the Department provided specific feedback to the Utah congressional delegation in September 2016 on legislation being offered by Chairman Chaffetz and Rep. Rob Bishop, the Chairman of the House Committee on Natural Resources, known as the Public Lands Initiative (PLI), which had been the Utah delegation's alternative solution to this issue. Ultimately, the PLI was not considered by the House of Representatives.

Public statements by the Bears Ears Inter-Tribal Coalition, which is comprised of local tribe Uintah & Ouray Ute, as well as the Hopi, Ute Mountain, and Zuni Governments, underscore the PLI's flaws. On December 15, 2016, the Coalition issued the following statement:

Utah's elected officials had years to act to protect Bears Ears. Instead of attempting serious legislation, they stalled and blocked any real attempts at legislative progress. ... Utah's Governor and congressional delegation have stated they believe it is important to protect areas within the Bears Ears region, yet the failure of a good faith effort to pass sound legislation to provide the protections needed to safeguard the homelands of our ancestors belies those claims.⁷

The documents obtained by the Committee also demonstrate that many current and former locally elected officials and candidates supported a monument designation, including Gene Davis, the Utah State Senate Minority Leader. The documents include resolutions from local native tribes and community groups supporting the Bears Ears monument designation and opposing the legislation proposed by Chairmen Bishop and Chaffetz.

In addition, two polls conducted in Utah demonstrated broad support for a Bears Ears national monument designation. A May 2016 poll released by the Bears Ears Coalition found that 71% of Utah residents supported a national monument designation.⁸ An August Pew Charitable Trusts poll found that 55% of Utah residents supported a new national monument.⁹ In

⁷ Bears Ears Coalition, *News and Media Page* (Dec. 15, 2016) (online at www.bearscoalition.org/wp-content/uploads/2015/10/BEITC-response-to-PLI-failure-12-15-16.pdf).

⁸ Bears Ears Coalition, *News and Media Page* (May 17, 2016) (online at <https://bearscoalition.org/poll-71-of-utahns-support-bears-ears-national-monument/>).

⁹ Pew Charitable Trusts, *New Poll: Utahans Support Protections for Bears Ears Area*

addition, two local Utah tribes, the Ute Indian Tribe and the Oljato Chapter of the Navajo Nation, expressed public support for the monument designation.¹⁰

Key documents obtained by the Committee are set forth in the attachment to this memo.

(Aug. 11, 2016) (online at www.pewtrusts.org/en/research-and-analysis/analysis/2016/08/11/new-poll-utahans-support-protections-for-bears-ears-area).

¹⁰ Bears Ears Coalition, *Tribal Statements of Support Page* (July 14, 2015) (online at www.bearscoalition.org/wp-content/uploads/2015/03/Northern-Ute-letter.pdf); Utah Dine Bikeyah, *News Page* (Nov. 16, 2015) (online at <http://utahdinebikeyah.org/oljato-chapter-in-favor-of-bears-ears-designation/>).

ATTACHMENT
Documents Relating to Bears Ears Designation

- (1) An Internal Timeline of Events produced by the Department shows repeated contacts with Senator Hatch, Chairman Bishop, Chairman Chaffetz, and their staffs over four years since 2013, including meetings or calls with the Secretary in 2013, 2014, 2015, and 2016, as well as feedback in the form of technical assistance on their bill, the PLI.
- (2) Eleven emails from twelve weeks from August 2, 2016, to December 28, 2016, the day President Obama designated Bears Ears a National Monument, show the coordination of weekly phone calls between Department staff and staff from the offices of Chairman Bishop, Chairman Chaffetz, Senator Lee, Senator Hatch, and Governor Herbert.
- (3) On December 21, 2016, Governor Herbert's Policy Director sent an email to Nicole Buffa, Secretary Jewell's Deputy Chief of Staff, thanking her for her work on the Bears Ears project, writing: "Thanks again for all your time. I'm not kidding when I say you're an amazing example of a public servant. I have the utmost respect for you. Thank you for your time and attention."
- (4) On July 5, 2016, Nicole Buffa, the Deputy Chief of Staff to Secretary Jewell, sent an email to Senator Hatch's Deputy Legislative Director and others, writing: "As we talked about, SJ [Secretary Jewell] very much wants to travel to Utah to meet with local stakeholders, the tribes, local electeds, and the public to discuss conservation in southern Utah. ... During her visit, we'd like to have smaller meetings with PLI supporters in San Juan County. Would one of you be able to send me a list of folks we should be talking with? I'm open to any and all suggestions."
- (5) On July 18, 2016, Governor Herbert's Policy Director sent an email to Nicole Buffa, Secretary Jewell's Deputy Chief of Staff, complimenting the success of Secretary Jewell's visit to Utah, writing: "I have to compliment you on a wonderful trip. As I recently relayed to the Governor's Chief of Staff, your team orchestrated a comprehensive, balanced, well-run, and effective trip of southeast Utah. I also have to compliment you on the listening session on Saturday. We were worried it might get out of hand but it went off brilliantly. Kudos to you and your team!"
- (6) On September 2, 2016, Christopher P. Salotti, Legislative Counsel for the Office of Congressional and Legislative Affairs at the Department, sent a letter conveying technical assistance to Chairman Bishop and Chairman Chaffetz, writing: "In accordance with your July 20, 2016, request, the Department of the Interior has prepared the enclosed technical assistance on H.R. 5780, the Utah Public Lands Initiative. ... In addition to what is noted throughout the draft, the Department would like the opportunity to work with the bill sponsors on the individual boundary modifications both to improve manageability and ensure protection of natural, cultural, and other resources in those areas."
- (7) On July 31, 2016, Secretary Jewell sent a handwritten note to Governor Herbert, writing: "Many thanks for meeting with me at the airport before my visit to the counties in SE Utah. ... As you have read and heard from [the Governor's staff], the meetings were respectful and covered many different points of view. Spending time with [employees]

of SITLA [School and Institutional Trust Lands Administration] was very helpful in understanding the state's interest in land swaps and consolidation—we will continue to work with them. Please keep me informed if you still wish to have me visit the state with you in the fall. We are glad the PLI was finally released during my visit. My team is reviewing it carefully and will continue to work with the delegation. ... The different points of view weren't as far apart as people anticipated. These lands deserve further protection and resources—that was fairly universal.”

- (8) On September 13, 2016, a staffer to Senator Lee emailed Nicole Buffa, Deputy Chief of Staff to Secretary Jewell, writing: “Sorry for the late notice but Lee and Hatch are about to introduce a bill that would prohibit use of the Antiquities Act within Utah. Since it is looking like Congress, the hardest working institution in America, is going to get out of dodge next week, we may not have the opportunity to introduce PLI. The plan has always been to defer to Bishop, let him work and move PLI through the House, and then introduce in the Senate. With our new truncated calendar, that may not be possible. ... We are still reviewing your ta [technical assistance] and deciding how to proceed. Just wanted to keep you informed since you have been forthcoming with us.”
- (9) On September 13, 2016, an employee with the Utah School and Institutional Trust Lands Administration emailed staff at the Department of the Interior thanking them for meeting, writing: “We truly appreciate the amount of time your office has devoted to the school trust land issue.”
- (10) On July 30, 2016, Secretary Jewell sent a handwritten note to County of Emery Commissioners expressing her appreciation for their meeting, writing: “Thank you for hosting my recent visit and for sharing your work on land use planning for the county. ... I also appreciated the opportunity to better understand the process Emery County has undertaken as part of the Public Lands Initiative.”
- (11) On December 31, 2015, the Bears Ears Inter-Tribal Coalition, comprised of local tribe Uintah & Ouray Ute, as well as the Hopi, Ute Mountain, and Zuni Governments, sent a letter to Chairmen Bishop and Chaffetz, writing: “Our strenuous efforts to participate in the PLI, and related proceedings before that over the course of the past six years, have been consistently stonewalled. We have never been taken seriously. Now 2½ months after submitting our proposal to you, we have received no reactions at all from you on your proposal. The promised draft PLI was never delivered. All of this is consistent with PLI's repeated failures to meet deadlines. Our five sovereign tribal nations, and our carefully-drafted comprehensive proposal, deserve far more than that. ... We don't feel we can wait any longer before engaging with the Obama Administration concerning our proposal in the hope that they will advance our proposal via the Antiquities Act.”
- (12) On June 29, 2016, the Bears Ears Inter-Tribal Coalition sent a letter to the Utah Delegation, writing: “As you know, we withdrew from the Public Lands Initiative process late last year. We set out in detail our reasons for withdrawing in a letter to you dated December 31, 2015. In the intervening months, your approach toward our proposal and our coalition have reaffirmed the concerns expressed in our December letter. ... We are satisfied that a Bears Ears National Monument proclaimed by President Obama under his authority granted by the Antiquities Act presents the best opportunity to protect the

Bears Ears landscape and assure a strong Native American voice in monument management. We hope you will join us in supporting a Bears Ears National Monument.”

- (13) On July 23, 2016, the Bears Ears Inter-Tribal Coalition sent a letter to Chairman Bishop and Chairman Chaffetz, writing: “We do not see how further discussions can be productive. The basic problem is that our two sides hold dramatically different views on what should be done in the Bears Ears area. Our proposal calls for strong conservation measures and deep involvement of the Tribes in monument management. The current version of the PLI is highly protective of mining and other forms of development to the detriment of land protection.”
- (14) On September 20, 2016, 31 current and former local officials and candidates sent a letter to President Obama supporting a Bears Ears National Monument designation, writing: “There is a false media narrative around the effort to protect Bears Ears that would have you believe that Utah elected officials are unanimously opposed to a Bears Ears National Monument. We hope this letter puts that narrative to rest and we ask that you use your authority under the Antiquities Act to protect this land for all people, for all time.”
- (15) On October 4, 2016, Gene Davis, the Utah Senate Minority Leader, sent a letter to President Obama supporting a Bears Ears National Monument, writing: “Now it’s the time to take action. With little chance of Congress protecting the Bears Ears region, you should use your authority to establish the Bears Ears National Monument and ensure permanent protection of this unique region. In doing so, you would be heeding the calls of Native American tribes, labor unions, veterans, business owners, faith leaders, sportsmen, recreationalists, conservationists, and many others who wish to see these lands protected and appropriate access ensured.”
- (16) On March 12, 2015, the Navajo Nation Council’s Committee passed a resolution supporting a Bears Ears National Monument Designation, making clear that “the Navajo Nation includes communities in San Juan County, Utah,” and warning that “to prevent this rapid destruction of lands in the San Juan County region important to Native peoples, formal protection as a national conservation area or national monument is required.”
- (17) On November 30, 2016, a coalition of 18 national, regional, and local conservation groups sent President Obama a letter supporting a Bears Ears monument designation, writing: “We urge you to proclaim a Bears Ears National Monument this year. ... Despite its vast cultural significance, inadequate legal protections and insufficient funding have resulted in the degradation and destruction of these archaeological treasures from illegal looting, mismanaged recreational use, and inappropriate energy development. The designation of this new national monument, including adequate funding, will provide the enhanced protections required to protect this national treasure.”
- (18) On September 9, 2016, the Friends of Cedar Mesa sent a map to Secretary Jewell showing a problematic land trade near Bluff, Utah that was proposed in Chairman Bishop’s PLI legislation on behalf of SITLA (School and Institutional Trust Lands Administration).

- (19) On January 6, 2016, Friends of Cedar Mesa, a conservation group based in Utah, emailed Neil Kornze, Director of the Bureau of Land Management, to request a meeting, writing: “We would like to speak briefly with you about ongoing damage to archaeological resources, the critical importance of this area to recreation enthusiasts from around the world, and our thoughts about possible legislative and administrative actions to conserve this area, including collaborative management ideas.”
- (20) On October 11, 2016, Bruce Adams, Commissioner of San Juan County, emailed the Executive Assistant to Nicole Buffa to confirm a meeting to discuss alternatives to a monument designation, writing: “Our primary mission is to invite agencies from the Department of Interior to participate in revision of the San Juan County Master Plan and positively touch a few points in the report that we believe the various agencies may wish to consider going forward.”
- (21) On March 30, 2016, Secretary Jewell’s Deputy Chief of Staff emailed Senator Hatch’s staff to thank them for meeting, writing: “Thank you again for the impromptu meeting with [redacted] and me a few weeks ago! I’m glad we had the chance to sit down and connect and hope that we are able to speak again soon.”
- (22) On November 3, 2016, a staffer for Senator Mike Lee sent an email to inform Secretary Jewell’s Deputy Chief of Staff of a meeting Senator Lee’s office had with the Bears Ears Coalition, writing: “The conversation went well. Both sides were conciliatory and regretted the current state of affairs. Much of the meeting was necessarily spent atoning and promising to work towards our shared goal: protecting Bears Ears.”

Appendix D

Timeline of Tribal Engagement in Protection

II. Timeline

2009

- March: President Obama signs Senator Bennett's Washington County Lands Bill. Many counties throughout Utah request inclusion in the next bill.
- March: Utah Tribal Leaders Association begins regular discussions on how best to engage in future land-use negotiations to advance Native American interests on public lands. (UTL Agenda-6-25-09, 8-6-09, 11-12-09)

2010

- February: Senator Bennett initiates land-use planning initiative in San Juan and seven other counties in Utah. An intensive and collaborative land-use negotiation process ensues that involves dozens of organizations that meet every few weeks for six months.
- May: Kenneth Maryboy invites Mark Maryboy and Gavin Noyes, Utah Program Director for Round River, to help develop a plan to represent Utah Navajo interests in the Bennett process. Mark serves as a consultant and community liaison to a small team of land planning experts and prioritizes the opinions of grassroots people, elders and the inclusion of all Tribes throughout the region.
- May: June-August: All seven Navajo Chapter Houses in Utah approve resolutions of support for Mark and other leaders to carry out ancestral mapping of lands and development of the Bears Ears proposal in San Juan County.
- June: Utah Navajo leaders initiate a 2 ½ year-long cultural mapping effort including Navajo elder interviews, data collection, and policy research, studying co-management, as well as local state, and federal policies.
- August: Utah Navajo leaders approve a draft proposal in advance of Senator Bennett's deadline. This proposal was not released or made public because Senator Bennett's time in office expired before the bill could be introduced (Bennett was defeated at his state Republican convention)
- October: Second round of elder interviews initiate to collect more detailed information about Native American cultural uses in San Juan County.

2011

- March: Utah Navajo cultural interviews are complete.
- April: The "Navajo Lands of Interest" (NLOI) pre-proposal map is widely distributed throughout Utah and in Washington DC. Leaders from all sides express strong support for Utah Navajos in advancing interests regarding their ancestral lands.

- July: UDB releases a book describing Native American interests to the public; 8,000 copies are distributed throughout Utah and in Washington DC. (Copies are available by emailing utahdinebikeyah@gmail.com) Major press events are held in Bluff and Salt Lake City and the President of the Navajo Nation weighs in with his office's support. The book helps generate significant recognition that Native Americans have a right to engage in conservation of this region, a concept with which most Utahns seem unfamiliar.
- July: Navajo Nation President Ben Shelley asks Secretary Salazar in a letter to protect Bears Ears as a National Monument because it is one of our country's "Crown Jewels."
- September: Formal land planning initiates for the Bears Ears region by the leadership of Navajo Nation Division of Natural Resources.
- October: UDB signs an MOU with the Navajo Nation to formalize development of the Bears Ears proposal.

2012

- January: Utah Dine Bikeyah Board of Directors is set and organization launches to provide guidance on proposal development, conducts regular ceremonies and holds community/ house meetings to discuss the Bears Ears project with their communities.
- February: Navajo Nation President and UDB present UDB book and NLOI map to the Utah State Legislature. Many Utah officials express support for the Native American effort to protect spiritual sites on public lands within the Bears Ears landscape.
- March-December: Navajo Nation and UDB engage San Juan County Commissioners in discussions to pursue a collaborative County-wide Joint Planning process, assuming that Congressional leaders would initiate a new planning process.
- July: Congressman Bishop begins informal meetings with governments and stakeholders. Neither Tribes nor UDB are listed as early participants.
- August: During several meetings, UDB tells San Juan County Commissioners Phil Lyman and Bruce Adams of its goal to seek protection for Bears Ears area either as a NCA through the legislative process, or as a NM through the Antiquities Act. They express a desire to participate in developing a joint legislative position spanning Native and non-Native interests.
- October: San Juan County Commissioner Phil Lyman invites UDB Board Members to his office and tells them that Native Americans "lost the war" and shouldn't be commenting on public lands issues, much like he doesn't tell the Scottish government what to do after his ancestors left Scotland. UDB carries out

its own research and leans that Native Americans have every right to engage in public land planning.

- December: The Navajo Nation and San Juan County sign a Memorandum of Agreement to undertake Joint Planning for all public lands in San Juan County. The identified purpose of Joint Planning is to create a shared vision supported by commissioners and the Navajo Nation.

2013

- January: The Navajo Nations and UDB complete Bears Ears data collection and analysis. Navajo Nation decision-makers utilize this data to make policy decisions.
- January: Navajo/San Juan County Economic Development Committee forms under Joint Planning agreement.
- February: Bishop Public Lands Initiative launches and the Navajo Nation and UDB is invited to participate. Congressman Bishop does not list the Ute Mountain Ute, San Juan Paiute, or Tribes outside of Utah as early participants. (See Letter from Congressman Bishop to Utah Dine Bikeyah, 2/15/13, launching Public Lands Initiative).
- April: UDB and the Navajo Nation spoke to the entire group at length and gave a one hour presentation on the proposal origins. We walked through the four prongs of the proposal including; NCA boundaries, wilderness proposal, regions proposed for co-management, and access needs (including firewood, herb collection, hunting, and ceremonial-use) We made a proposal like this to local, state, federal officials and the public at approximately 25 subsequent meetings. Congressmen Bishop and Chaffetz had staff at approximately half of these meetings. The Navajo Nation proposal did not result in any response from the Utah congressional delegation or substantive discussions.
- April 17th: The Navajo Nation presents its proposal to San Juan County, State of Utah officials, and Utah Congressional delegation at Monument Valley. Discussion of Bears Ears proposal lasts for over two hours. (See SJC NCA Supporting Maps 3/28/13, and Navajo Nation Press Release and UDB Press Release, 8/9/13) The Navajo Nation proposal did not result in any response from the Utah congressional delegation or substantive discussions.
- May 2013- March 2015: UDB and the Navajo Nation made a total of four trips to Washington DC. We always met with the Utah Congressmen, including Representatives Bishop, Chaffetz, and Senator Hatch. When we visited, we always delivered a two page description of the proposal and offered a large map of the Bears Ears proposal. We always discussed the four prongs of the proposal including; NCA boundaries, wilderness proposal, regions proposed for co-management, and access needs (including firewood, herb collection, hunting, and ceremonial-use) We did not receive any substantive responses.

- May: Joint Planning meetings are put on hold while San Juan County develops its internal proposal. San Juan County questions the legitimacy of the Navajo Nation proposal. (See letter from UDB to SJC on 5/21/13)
- July: Navajo Nation submits the Bears Ears proposal for Bishop's August, 2013 deadline. San Juan County does not respond to the Navajo proposal prior to this deadline and does not publicly submit a position to Congressman Bishop.
- August: Congressional leaders organize field trips including one led by UDB and hold public hearings in San Juan County. At the public hearing, San Juan County residents sling racist insults at Native American attendees. The Utah delegation does not intervene and subsequently, Native Americans stop attending public meetings in northern communities of San Juan County. (Letter from UDB to Congressman Bishop sent on 8/12/15 details this event and the negative impact it had on race relations in SJC.)
- September: Bishop's legislative deadline passes without Congressional action.

2014

- January: Commissioner Lyman selects individuals to join the San Juan County Citizen Lands Committee.
- May: Commissioner Lyman leads an armed militia on an all-terrain vehicle ride into sacred Recapture Canyon trespassing into an area closed to motorized vehicles.
- June: Joint Planning agreement between Navajo Nation and San Juan County expires and San Juan County is unresponsive to UDB letters regarding Joint Planning agreement.
- July: UDB formally asks SJC and its newly formed Citizens Lands Council to respond to the Bears Ears proposal by August 15 so that parties can understand the likelihood of creating a shared proposal, or determine if a National Monument request should be made (See UDB to SJC letter 7/9/14). San Juan County does not respond, except by phone to communicate that they will engage with the Bears Ears proposal on their own timeline once SJC's proposal is complete.
- August: Navajo Utah Commission unanimously adopts a resolution of support (Resolution NUCAUG-616-14) endorsing the permanent protection of lands in San Juan County, UT as a National Conservation Area or National Monument. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- September: UDB conducts outreach to new Navajo Nation officials and Tribes throughout southwest.
- September: Hopi Tribal Chairman Herman Honanie sends a letter of support for the permanent protection of the Bears Ears landscape to the Utah

2014 continued

Congressional Delegation.

- September: Ute Mountain Ute request renaming of proposal. UDB drops the proposal name “Utah Diné Bikéyah” and replaces it with “Bears Ears.”
- September: UDB reports to Secretary Jewell on the inability of Native Americans in SJC to obtain any kind of response to its conservation proposal, even after 18 months of diligent effort. (See UDB letter to Secretary Jewell 9/19/14)
- September: Six of seven Navajo Chapter Houses in Utah adopt resolutions of support for Bears Ears
- September: Utah Congressional delegation asks San Juan County to include the Navajo Nation in its legislative proposal development process and to deliver one or more positions by the end of the year.
- October: San Juan County confirms its July agreement to include Bears Ears proposal in SJC list of alternatives for its public process.
- October: San Juan County proposes five Open Houses in Oljato, Bluff, Blanding, Monticello, and LaSal to hear local preferences for land-use alternatives. Only one meeting is scheduled in a Native community. UDB offers to convene additional meetings on reservation, provide translation skills, and create radio ads to ensure people hear about event. SJC agrees and asks UDB to partner on Open Houses. SJC also asked UDB to run the open house at the Navajo Mountain community without representation from SJC due to the travel cost, and provides UDB chairman, Willie Grayeyes, with copies of maps of alternatives.
- October: UDB delivers Bears Ears GIS layer package of the Bears Ears proposal to San Juan County. On March 4th, 2015 this same layer package is sent to Casey Snyder and Cody Stewart from Congressman Bishop and Governor Herbert’s offices.
- October: UDB delivers Bears Ears GIS layer package of the Bears Ears proposal to San Juan County. On March 4th, 2015 this same layer package is sent to Casey Snyder and Cody Stewart from Congressman Bishop and Governor Herbert’s offices.
- October: San Juan County excludes Bears Ears proposal from its list of land-use alternatives for its public process. UDB asks why the County has asked it to partner on Native outreach if the County is not including the Native proposal for Bears Ears.
- October: SJC adds one Open House in the Aneth community (on-reservation), but fails to run radio ads, send flyers to Chapter Houses, or even obtain the

2014 continued

mailing addresses for hundreds of San Juan County residents who retrieve their mail at PO Boxes in Arizona. Consequently, Native American turn-out was low at San Juan County Open Houses (25-35 people total).

- November: UDB organizes seven Town Hall Meetings to ensure that all Native American communities in Utah have the ability to submit comments to the PLI process. UDB conducts outreach by running radio ads and posting flyers at Chapter House. 250-350 Native community members attend discussions.
- November: All Pueblo Council of Governors unanimously adopts a resolution of support (Resolution No. 2014-17) endorsing the protection of the Greater Cedar Mesa Landscape in San Juan County, UT. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- December: Bears Ears proposal wins 64% of support from San Juan County residents during public process. Alternative B that San Juan County eventually adopts receives two comments of support, or less than 1% of total.
- December: Navajo Nation and UDB representatives go to Washington, DC and report again to the Utah congressional delegation that San Juan County is not responsive to the Native American proposal in the legislative process.
- December: UDB is told by SJC that it may no longer participate in Bishop's PLI. (See letter from UDB to SJC on 12/13/14)
- December: Bishop's informal legislative deadline passes without Congressional action.

2015

- January: San Juan County Commissioner Rebecca Benally replaces Commissioner Kenneth Maryboy as County representative for the majority Navajo district.
- January: Phil Lyman tells UDB that it has no standing in San Juan County and rejects UDB's request to participate in Citizens Lands Council. Lyman says he represents Utah Navajos as Chairman of the San Juan County Commission and challenges UDB's ability to represent Navajo people. UDB explains that its MOU with the Navajo Nation and resolutions of support from Utah Chapter Houses gives it the authority to represent local land-use desires. UDB sends a letter to Congressmen Bishop and Chaffetz asking to work.
- January: Navajo Nation seeks guidance from Congressman Bishop on how to engage in the PLI. No substantive response is received. (See NN letter on 1/30/15, also see UDB handout to SJC on 2/3/15)
- February: The entire Utah Congressional delegation sends a letter to stakeholders and Tribes announcing the upcoming release of a map and legislative language for

2015 continued

PLI on March 27. Areas of “collaborative agreement” are listed as priority designations. (See letter sent on 2/4/15)

- February: Hualapai Tribal Council unanimously adopts a resolution of support (Resolution No. 06-2015) endorsing the Bears Ears Conservation Proposal. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- February: Navajo Nation President Ben Shelley asks Utah Governor Herbert to support Tribes in protecting the Bears Ears landscape. Governor responds that the Nation needs to get its proposal to Congressman Bishop and Chaffetz “as soon as possible.” (See UDB letter on 2/9/15)
- February: UDB informs Congressmen Bishop and Chaffetz that it has tried and failed to re-engage with San Juan County and its Citizens Lands Council and wants to be included in PLI. UDB requests a meeting directly with Congressional staff to discuss critical issues that need to be detailed prior to the March 27 release of draft legislative language. (See UDB letter on 2/9/15) No substantive response is received from the Congressional offices, but assurances are given by phone that UDB and Native American interests will be included.
- February: Due to Congressional pressure, San Juan County invites the Navajo Nation, Ute Mountain Ute, and UDB to try to negotiate a shared position through a series of future meetings. A new legislative deadline is set for March 27. (PLI letter from Utah Congressional delegation 2/4/15)
- February: White Mesa Community of the Ute Mountain Ute joins UDB and appoints Mary Jane Yazzie as a Board Member to include Ute perspective in Bears Ears proposal.
- March: At the urging of San Juan County Commissioners, and without consulting Tribes or informing UDB, the Utah State Legislature passes HB 393¹, which undermines major portions of the Bears Ears proposal by designating it as an “Energy Zone.” This bill aims to streamline development and declares grazing, energy and mineral development to be the “highest and best use” of public lands.

¹ Legislative language can be found at: <http://le.utah.gov/~2015/bills/static/HB0393.html>. Utah Code section 63J-8-105.8 lists “grazing agricultural commodity zones.” According to the state, grazing is the highest priority in these zones, and the historic level of livestock grazing in these zones has been unreasonably, arbitrarily, and unlawfully restricted by federal land managers. In San Juan County, the “Grand Gulch Region Grazing Zone,” (63J-8-105.8(2)(dd)), the “Cedar Mesa East Region Grazing Zone, (63J-8-105.8(2)(ee)), the “Dark Canyon/Hammond Canyon Region Grazing Zone, (63J-8-105.8(2)(ii)), and the “Chippean/Indian Creek Regional Grazing Zone,” (63J-8-105.8(2)(jj), are included.

2015 continued

- March: Navajo Nation Council unanimously adopts a resolution of support endorsing the designation of Bears Ears as a National Conservation Area or National Monument. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- UDB travels to Washington D.C. and details negotiation process options with Congressman Chaffetz staff by drawing on maps with markers.
- UDB presents a revised Bears Ears wilderness proposal to Congressman Chaffetz staff and San Juan County during negotiation meeting that better accommodates for firewood collection.
- April: Bishop imposed legislative deadline passes without Congressional action.
- March, April, & May: Four negotiation meetings are held between San Juan County, Tribes and stakeholder groups. These meetings have strong representation from Native American leaders and residents, but meetings are poorly run. For example agendas are never prepared, a neutral facilitator is not provided (SJC always leads), and parties are not asked to bring anything new to the table (See UDB letter to Congressman Bishop/ Chaffetz 7/8/15)
- April: Commissioner Lyman convicted of illegal trespass in his 2014 ATV ride. (See SL Tribune 5/1/15)
- April-May: The Wall Street Journal, New York Times, Salt Lake Tribune and others feature the Bears Ears proposal and the PLI.
- May: UDB and supporting organizations send letter to Representative Bishop and Chaffetz indicating what they will support/ oppose in a legislative proposal.
- May: The Bears Ears website surpasses its goal of 10,000 petition signatures of support only four weeks after launching.
- May: Congressman Chaffetz staff inform the Navajo Nation that legislation will be introduced in July, 2015.
- June: All Pueblo Council of Governors sends a letter to the UT Congressional Delegation and the Obama Administration clarifying that their earlier resolution of support (Resolution No. 2014-17) endorsing the protection of the Greater Cedar Mesa Landscape should be considered support for the Bears Ears Conservation Proposal.
- June: Negotiations between the SJC Citizen Lands Council, UDB, and the Navajo Nation fail to produce any results. Furthermore, at the final meeting, neither UDB nor the Tribes are invited to attend. They are told that the SJC Commissioners did

2015 continued

not require any further information to make its final decision. (Letter from UDB to Chaffetz 7/9/15)

- June: SJC Citizens Lands Council votes on a final proposal to SJC Commissioners without input or participation from Ute, Navajo, San Juan Paiute Tribes or UDB.
- July: Congressman Chaffetz' office assures UDB Board Members that Native American interests will be heard by Congressman Bishop prior to release of Draft language. Chaffetz agrees to "consider" including Tribes outside of San Juan County. UDB asks know the degree to which Chaffetz will support Bears Ears by early Sept. (Letter from UDB to Chaffetz 7/9/15)
- July: Chairman Chappoose of the Uintah and Ouray Ute Indian Reservation Tribal Business Committee sends a letter of support for the Bears Ears conservation proposal. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- July: Bears Ears Inter-Tribal Coalition formalizes its leadership to advance the Bears Ears Proposal and meets with federal officials from Washington DC at Bears Ears.
- July: With the addition of the Hopi, Zuni, Ute Mountain Ute, and Ute Indian Tribes; 25 tribal governments now endorse designating Bears Ears as either a National Conservation Area or National Monument through official letters and resolutions of support.
- July: Bishop imposed legislative deadline passes without Congressional action.
- July: UDB organizes a Bears Ears panel discussion with Ute Mountain Ute, Congressman Chaffetz and Governor Herbert's PLI representatives at Utah's Annual Native American Summit in Provo, Utah. Sixty people attend. At this conference, Navajo Nation President Russell Begaye also asks conference attendees to support Tribes in protecting Bears Ears. No substantive follow-up discussions occur with Utah officials after this conference.
- August: Chairman Heart of the Ute Mountain Ute Tribe sends a letter of support for the Bears Ears Conservation Initiative. Copies are provided to the UT Congressional Delegation and relevant members of the Obama Administration.
- August: San Juan County Commissioners unanimously adopt Citizens Lands Council recommendations.
- August: Five Tribes of the Bears Ears Inter-tribal Coalition requests a formal meeting with Congressman Chaffetz and Bishop and inclusion prior to the release of draft language. (See letter sent on 8/5/15)

2015 continued

- August: Congressman Chaffetz, Utah officials, and San Juan County Commissioners meet with the Navajo Nation President Begaye and suggests that Native American interests are well represented by San Juan County officials. The President points to the tally of local comments received in 2014 and asks how this could be the case. Commissioner Benally offers no explanation.
- August: UDB meets with Congressman Chaffetz's staff and informs them that the opportunity to negotiate with UDB has ended and that Tribes are now in charge. Staff agrees to reach out to the Bears Ears Inter-tribal Coalition to set up a meeting.
- August: On August, 5, 2005, Alfred Lomahquahu and Eric Descheenie, Co-Chairs of the Bears Ears Inter-Tribal Coalition, write Congressmen Bishop and Chaffetz a three-page letter. The letter details the current situation and requests a meeting in order to discuss the Tribe's proposal and to "work with you towards meaningful conservation legislation on an accelerated time line." This does result in any substantive discussions. (See letter sent on 8/5/15)

Comments	<u>Alternative or Proposal</u>
33	Lands Council Alternative A
2	Lands Council Alternative B
93	Lands Council Alternative C (some proposed additional protected areas)
24	San Juan Alliance Proposal (includes some who noted Alt. A as second choice)
300	Dine Bikeyah Proposal - includes petition of 246 signatures (21 with comments; 194 SJC residents, 52 likely non-SJC residents w/out-of-county/state mailing addresses); 97 comment letters+ 7 likely non-SJC resident comments + 2 unsigned/unaddressed comments; and 9 verbal comment transcripts
	Greater Canyonlands NCA (The Nature Conservancy)
	Red Rock Wilderness
	All Share and Get Along
	No preference until details of legislative narrative worked out
	Any proposal should be as limited as possible and no road closures
10	No Bill [continue current management; or Alt. A if pushed (2); no road closures]
467	Total (may include some duplicate comments from same commenter)
	Three resolutions supporting Dine Bikeyah efforts (Navajo Utah Commission, Navajo Mountain Chapter, and Oljato Chapter)
5	Additional non-resident comments supporting various alternatives or proposal

Appendix E

NPCA letters regarding the Utah PLI and Bears Ears



September 2, 2015

To: The Bears Ears Inter-Tribal Coalition

Dear Co-Chairs,

On behalf of our members and supporters, the National Parks Conservation Association (NPCA) would like to express support for the Bears Ears Inter-tribal Coalition in your effort to permanently protect the rich cultural and natural landscape of the Bears Ears proposal area. We have followed the development of the Bears Ears proposal over the past several years and admire the great strides your coalition has made in bringing a diverse tribal community together to support the effort while progressing toward significant, lasting protections for an area that has not historically been well-managed for its cultural landscape values.

NPCA has a long-term commitment to protect a significant portion of the Bears Ears proposal in northern San Juan County, adjacent to Canyonlands National Park. This area links directly to our mission to protect and enhance America's National Park System for present and future generations. Founded in 1919, NPCA has become the leading citizen voice for the national parks. We are a national non-profit with headquarters in Washington, DC, and 24 regional and field offices across the country, including our Southwest Regional office in Salt Lake City. NPCA represents over one million members and supporters who care deeply about America's shared natural and cultural heritage preserved by the National Park System.

While we have advocated since 1988 for expanded protections of the natural and cultural resources around Canyonlands National Park— something we call “Canyonlands Completion”, we recognize that we have much more to learn from the tribal community about the rich cultural landscape and sacred sites within the Bears Ears area. We welcome the opportunity to gain greater insights of its significance to the Coalition. Our vision, thus far, around the park includes extending protections out from the existing national park boundary to the natural erosional boundary of the Wingate cliffs to include the entire basin – thus removing some of the external threats to park resources.

Completing the park would help curb irresponsible off-road vehicle use, and remove the threat of resource extraction within the Canyonlands basin by incorporating Lockhart Basin into the park. There are current leases and interest in developing energy resources

Southwest Regional Office

in Lockhart Basin, which is entirely inconsistent with the national park visitor experience, would create significant impacts on park resources, and would be highly visible from many locations both inside and outside park boundaries. Further energy development threats would be reduced with an eastern boundary expansion up above the rim of the Wingate cliffs and out to the Hatch Point Road. This is a critical area within the view shed of the park and potential development on the rim of the basin threatens not only the views from within the park, but also dark night skies, natural sounds, air quality and water resources.

Our vision for Canyonlands Completion also includes Beef Basin with its substantial archeological and cultural sites as well as areas near Newspaper Rock State Historic Monument. Incorporating these contiguous cultural sites into a larger protected landscape would help prevent impacts from incompatible multiple uses and ensure thoughtful, consistent management.

For the past several years, we have advocated for the inclusion of our vision for Canyonlands Completion first through a process begun in San Juan County by former Senator Robert Bennett and presently in Congressman Bishop's Public Lands Initiative (PLI). NPCA has supported an open, transparent process to evaluate the larger shared landscape and determine what type of land designations make sense for maintaining the remote, adventuresome nature of the area, its pristine landscapes, and its extraordinary cultural values. Our priorities for the Utah PLI relate to our mission to "protect and enhance our national park units for present and future generations". Those priorities include expanding protections around several park units in Utah through specific land designations as well as ensuring that activities on lands adjacent to park units, including inappropriate development of a SITLA parcel adjacent to Natural Bridges National Monument, do not impair park resources and values.

Although we have supported and participated in good faith in this legislative process, we remain uncertain as to its outcome as well as the level of permanent protection which will ultimately be included for much of Eastern Utah's spectacular landscape. With that in mind, given the scope of the Bears Ears proposal and the inclusion of much of the landscape that we too want to see permanently protected, particularly around Canyonlands National Park, we express our support for your Inter-tribal Coalition and the "Protect Bears Ears" effort. We would welcome an opportunity to work with the tribal communities and supporting organization on the Bears Ears campaign, particularly as it relates to the landscape surrounding national park sites.

As you consider the next steps in the Protect Bears Ears campaign, please consider the National Parks Conservation Association, our longstanding commitment to this region's iconic national parks, and our genuine interest in improving our connections to and understanding of the tribal interests and resources in the region. We welcome the opportunity to assist in Bears Ears outreach and other actions as needed. In addition, our own advocacy for this magnificent landscape would most definitely be strengthened through your knowledge and support.

Thank you for the opportunity to share our common interests in this unique landscape. Please feel free to contact me to further discuss our work as it relates to your efforts in

Southwest Regional Office

San Juan County. I can be reached at dnimkin@npca.org, work: 801-521-0875, or cell: 801-518-1270.

Sincerely,

A handwritten signature in black ink on a light yellow background. The signature is cursive and appears to read "David Nimkin".

David Nimkin
Senior Regional Director

Southwest Regional Office

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Congressman Rob Bishop
U.S. House of Representatives
Washington, D.C. 20515

Congressman Jason Chaffetz
U.S. House of Representatives
Washington, D.C. 20515

February 13, 2016

Dear Congressmen,

Since March of 2013, the National Parks Conservation Association (NPCA) has been a stakeholder in the Utah Public Lands Initiative (PLI) process. From the beginning, we encouraged an open, transparent process for determining land designations based on mutual trust and a commitment to finding common ground, where possible. NPCA's priorities in the process stem from our mission to protect and enhance our national park units for present and future generations. This mission translates into protecting and conserving the unique ecological, cultural and recreational values of our national park units while also considering the larger shared landscape. This includes potentially expanding protections around several park units as well as ensuring that activities on lands adjacent to park units do not impair the air, water, sounds, night skies, views and other values that the National Park Service (NPS) is charged with protecting. Throughout the PLI process, NPCA's goal was to work toward legislation that would protect eastern Utah's magnificent landscape, while allowing for a variety of recreational opportunities, appropriate development, and robust local and state economies.

NPCA's top priorities for expanding protections within and around park units in the PLI include:

1. Canyonlands National Park Completion
2. Arches National Park Expansion
3. Hovenweep National Monument Expansion
4. Wilderness designation inside Arches and Canyonlands National Parks and both inside and adjacent to Dinosaur National Monument
5. Wild and Scenic River designation inside Dinosaur National Monument
6. SITLA land exchange within the Canyonlands Completion area, the west side of Arches and the proposed Arches expansion, and adjacent to Natural Bridges and Hovenweep National Monuments
7. The abandonment of RS2477 claims within and adjacent to NPS boundaries
8. Prevent new energy development adjacent to our national parks and where energy development is appropriate, ensure that it is well-planned and executed to protect park resources from harm

We recognize and appreciate the many hours of work, countless meetings, and initially, the open dialogue that many stakeholders and congressional staff invested in the PLI process. NPCA

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participated in multiple meetings and field trips with stakeholders including Uintah, Grand and San Juan County Commissioners and local county residents wherein we discussed our priorities and identified opportunities for collaborative compromise. While we made progress, particularly in Uintah and Grand Counties, several issues remained unresolved and others were not even discussed. We have been gravely concerned with the general lack of communication and closed door “negotiating” that transpired over the past six months to one year, despite our repeated requests to discuss draft language. Despite those concerns, we patiently waited for the release of the draft and withheld judgement until we were able to review the draft language.

Since the Utah PLI draft language and maps were released on January 20, 2016, we have closely examined the bill provisions as they relate to the national park units and the larger shared landscape. Although we are pleased to see our priority of expanding Arches National Park included in the discussion draft, we are shocked by many other provisions in the bill and do not consider the current draft bill a balanced approach to resolving Utah’s public land issues.

The draft bill ignores much of the progress made over the past three years and the collaborative approach taken in several of the counties. Overall, the draft bill is a missed opportunity to protect and preserve some of America’s greatest national parks and their surrounding public lands. Instead, in its current form, the bill would subject much of eastern Utah’s public lands to excessive development and off-road vehicle use, while weakening environmental protections and including a significant number of poison pills that in many cases were never discussed, much less agreed upon. Even the title of the bill is objectionable, *“To provide greater certainty and local management of federal land use in Utah, and for other purposes.”* The bill only provides certainty for economic development opportunities and not meaningful landscape conservation. It is also important to remember that these are federal lands and that while having local input and participation in management of these landscapes is important, these are public lands that belong to all Americans.

While we will outline some of our specific concerns below, NPCA cannot support a bill that contradicts and undermines key federal laws including the Wilderness Act, Clean Air Act, Antiquities Act, and National Environmental Policy Act. Stipulations in the draft currently attached to the designation of wilderness, national conservation and recreation areas undermine conservation and the purposes for which they were designated. We are also extremely concerned about the vast energy zones that would be opened up based on flawed BLM Resource Management Plans, eliminating the development of Master Leasing Plans, a valuable BLM planning tool, and a shocking and unacceptable giveaway of R.S. 2477 rights-of-ways inside national park boundaries and on the broader landscape.

These overarching and pervasive issues will need to be substantially addressed and resolved before NPCA can engage further in the PLI process.

Wilderness Designation

Although the draft legislation includes designating wilderness in Arches and Canyonlands National Parks, Dinosaur National Monument and Glen Canyon National Recreation Area, which we support, the draft wilderness language included in the current PLI contradicts the Wilderness Act and undermines the authority of the NPS to fully manage wilderness resources. As written, this bill would offer less protection for lands inside national parks because nearly all of the land designated in this bill as wilderness inside the parks is already recommended wilderness and currently managed by NPS consistent with the Wilderness Act. We are extremely concerned about many of the provisions in the wilderness administration language

which limit the land manager's ability and authority to appropriately manage the natural and cultural resources. All designated wilderness should be managed consistent with the Wilderness Act without stipulations and exemptions attached.

We also oppose the broad language that can be interpreted as taking away the state's right under the Clean Air Act to designate national parks and wilderness areas as Class I airsheds, to both set and meet their goals for clean air over our most treasured landscapes. We are particularly concerned that the discussion draft does not clarify how this stipulation would apply to the wilderness designation in Arches and Canyonlands National Parks, which are currently designated as Class I airsheds under the Clean Air Act. NPCA strongly opposes any effort to reclassify Arches and Canyonlands national parks from Class I to Class II airshed status.

National Conservation Areas

NPCA is very supportive of protecting landscapes adjacent to national park units and could be supportive of the National Conservation Area (NCA) designation if crafted with strong conservation language. However, the NCA designations included in the PLI discussion draft are in name only and do not provide for clear and meaningful protection of the shared landscapes, which in many cases are adjacent to NPS managed areas. Similar to the wilderness administration language, the NCA language in the draft PLI limits the ability of the land manager to adequately manage the resources they are intended to protect, and therefore does not represent a significant step forward in conservation.

We are especially disappointed that our long standing Canyonlands Completion priority was not addressed by expanding the national park boundary out to the natural erosional boundary of the Wingate Cliffs. As currently written, the Bears Ears NCA would not adequately protect the basin and its many natural and cultural resources. Instead, the NCA would allow for excessive off-road vehicle use and would likely preclude any future additions to the national park. We are also concerned with how Natural Bridges National Monument would or would not be incorporated into the Bears Ears NCA. The discussion map currently shows that Natural Bridges National Monument would be included in the Bears Ears NCA; however, we would advocate that it needs to continue to be managed by the National Park Service—which isn't reflected in the draft PLI.

Long Term Energy Development Certainty

Streamlining energy development and opening up over 2.5 million acres of eastern Utah to energy development based on flawed BLM Resource Management Plans completely ignores the recreational value of our public lands, threatens the vibrant outdoor recreation economy the State of Utah claims to value, and will result in significant impacts to the natural and cultural resources of our national parks and their shared landscapes. We feel strongly that opening the landscapes adjacent to national parks up to energy development with no regard for impacts on the natural and cultural resources or the experience of millions of people who flock to this part of Utah, would be a huge setback for conservation, the State of Utah, and all Americans who treasure our public lands.

In addition, NPCA has been a strong proponent of Master Leasing Plans as an important tool that can more effectively create certainty on the Utah landscape for all sides – whether for conservation, recreational use, or energy development. Effectively prohibiting the use of Master Leasing Plans by the BLM within the participating PLI counties will nullify years of cooperative efforts between land managers and local stakeholders who have been working together to

determine where energy development, recreation and conservation are most appropriate on the landscape around Arches and Canyonlands National Parks. This prohibition will also ensure that other national park units in the area do not receive a similar level of focused planning for potential energy development on the adjacent landscape.

Long-Term Travel Management Certainty

The draft PLI's addition of sweeping language that substantiates hundreds, maybe thousands of cowpaths, overgrown two-tracks and old mining routes as roads in seven counties is wholly unbalanced and ignores areas of compromise reached among stakeholders during this three-year process. These controversial, permanent rights-of-ways flout current laws and policies governing RS2477 claims and would encourage off-road vehicle use on federal lands where it does not currently happen.

Our position has been consistent—the counties and state do not have legitimate claims to the roads, paths and trails inside the national parks. Their management by the National Park Service is critical to achieve the flow and volume of visitors into the parks enabling them to meet goals for recreational access and long-term resource protection. We request that RS2477 claims in national park units be abandoned and generally, that RS2477 claims be removed from the PLI to be resolved through other legal means.

Additional Issues

In addition to the above overarching issues with the discussion draft, we have concerns with specific provisions in the draft language including, but not limited to:

- Wild and Scenic River Designation within Dinosaur National Monument was in an earlier version of the discussion draft, but excluded from the Jan. 20, 2016 version publicly released.
- The SITLA Land Exchange does not include a parcel adjacent to Natural Bridges National Monument, which if developed could have a significant impact on the park and its internationally recognized dark skies.
- The large block of land that SITLA would acquire near the northwestern boundary of Arches National Park would have significant impacts on park resources and overall visitor experience if large scale industrial energy development were to take place.
- Conveyance of the Hole-in-the-Rock trail within Glen Canyon NRA will limit the National Park Service's ability to effectively manage the trail and could result in both direct and indirect impacts to NPS managed resources—depending on how San Juan County intends to approach management of the trail for outdoor recreation and its historical attributes.
- Conveyance of over 15,000 acres identified as the Dugout Ranch to University of Utah without further clarification of the stated purpose for “education and research,” could result in incompatible uses immediately adjacent to Canyonlands National Park.
- Loosening environmental protections while encouraging more off-road vehicle recreation and more energy development in some areas within the Canyon Country Recreation Zones near both Arches and Canyonlands National Parks may have impacts on the dark night skies, air quality, natural sounds, viewsheds, and overall visitor experience of millions of people to these parks and their adjacent public lands.

- Encouraging and increasing off-road vehicle use on the Red Rock OHV Trail as it follows the landscape adjacent to the northwestern boundary of Arches National Park could create increased dust, noise, and diminished air quality. It is not clear from the discussion draft what type of NEPA process, if any, would be included with the feasibility study required by the Department of Interior.

Conclusion

While we believe the PLI process led to valuable discussions among diverse stakeholders in some counties and even the identification of areas of unexpected common ground, the draft legislation released on January 20, 2016 does not reflect the progress made. Instead, all semblance of compromise is overshadowed by broad policy provisions, some that were not shared or discussed with stakeholders, and others that NPCA identified as nonviable compromises from the beginning of the process. While NPCA remains committed to pursuing all genuine opportunities to achieve the protection the amazing, dynamic landscapes of Eastern Utah deserve, we do not believe the draft PLI represents a conservation gain for these public lands. We also remain disappointed that the development of the PLI has not been an open and transparent process, particularly in the past year. We do welcome the opportunity to speak with you directly about our considerable concerns with this draft of the bill.

Thank you for your consideration of our concerns and the opportunity to provide feedback on the January 20, 2016 draft PLI documents.



David Nimkin
Senior Regional Director
Southwest Region



Erika Pollard
Senior Program Manager
Southwest Region



Cory MacNulty
Senior Program Manager
Southwest Region



June 1, 2016

The President
The White House
Washington, DC 20500

Dear Mr. President:

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than one million members and supporters nationwide, I write to express our support for permanent protection of the Bears Ears region, the rich cultural and natural landscape of southeast Utah, as a national monument through the Antiquities Act. We commend the efforts of the Bears Ears Inter-Tribal Coalition, with its diverse tribal leadership, and their allies, for the strong proposal to provide significant and lasting protections for this area. It is in desperate need of safeguarding from looting and the destruction of sacred cultural sites.

NPCA shares a long-standing commitment to protect a significant portion of the Bears Ears proposal area of northern San Juan County, adjacent to Canyonlands National Park. Since 1988, we have publicly advocated for expanded protections of the natural and cultural resources around Canyonlands National Park through our Canyonlands Completion campaign. Our vision includes extending protections from the existing national park boundary to the natural erosional boundary of the Wingate cliffs—this better incorporates the whole basin, as well as adjacent cultural and natural resources, while removing some of the external threats to park resources.

NPCA's Canyonlands Completion area closely aligns with the current Bears Ears proposal boundary to the east and south of Canyonlands National Park. To the east of Canyonlands, expanding National Park Service management boundaries to include Lockhart Basin to above the rim of the Wingate cliffs and out to Hatch Point Road would curb irresponsible off-road vehicle use and remove the threat of resource extraction within the viewshed of Canyonlands National Park. Potential development within Lockhart Basin as well as on the rim of the basin threatens not only the views from within the park, but dark night skies, natural sounds, air quality and water resources—all critical resources and values of our national park.

To the south of Canyonlands, NPCA's proposal for Canyonlands Completion also includes extending protections to incorporate Beef Basin, with its substantial archeological and cultural sites, as well as areas near Newspaper Rock State Historic Monument and Indian Creek. Incorporating these contiguous cultural sites into a larger protected landscape, and providing the National Park Service an opportunity to manage them, would help prevent impacts from incompatible uses and ensure thoughtful, consistent oversight.

For the past several years, NPCA has advocated for the protection of these critical southeast Utah public lands through numerous processes. First in 2010 in San Juan County with an effort from Senator Robert Bennett, and more recently through the Public Lands Initiative (PLI) with Congressmen Bishop and Chaffetz. NPCA has consistently supported an open, transparent process to evaluate the larger shared landscape in order to determine what designations are most appropriate for

maintenance of the remote, adventure-filled area, its pristine landscapes, and its extraordinary cultural values.

Despite our consistent and good faith participation in the more recent PLI process, NPCA remains dismayed by the draft legislation released in January 2016, and the resulting declining level of communication from the delegation. Overall, the discussion draft of the PLI was a missed opportunity to protect and preserve some of America's greatest national parks and their surrounding public lands. Instead, the draft legislation would subject much of eastern Utah's public lands to excessive development and off-road vehicle use, while weakening environmental protections and including a significant number of unacceptable policy provisions, many of which were never discussed or agreed upon during discussions about the PLI.

The designation of a Bears Ears National Monument through the Antiquities Act is the best opportunity for the protection of not only the San Juan County portion of our Canyonlands Completion area, but the larger landscape around Natural Bridges National Monument and Glen Canyon National Recreation Area in southeast Utah. Unfortunately, much of the area throughout the Bears Ears proposal, including around the national park sites, has long suffered from looting and destruction of cultural sites, irresponsible off-road vehicle use, energy and mineral extraction, and other threats from inappropriate use and development.

We urge the administration to maintain the existing Bears Ears proposal boundary, including lands in the northern portion of the county, adjacent to Canyonlands National Park, as well as further south, in the heart of Cedar Mesa. Including the lands adjacent to Canyonlands National Park is critical to ensuring this stronghold is no longer vulnerable to incompatible uses that put the cultural and natural resources of the area at risk. In addition, the management of a possible Bears Ears National Monument should include the existing National Park Service role at Natural Bridges and Glen Canyon, and we encourage expanding National Park Service management around Canyonlands National Park, at least within the natural erosional boundary of the rim of the Wingate Cliffs—the contiguous landscape of Canyonlands National Park.

Thank you for your leadership in the protection of our nation's public lands through the Antiquities Act throughout your time in office. The Bears Ears National Monument proposal area is a unique, rich landscape worthy of such protective measures. NPCA strongly supports the inter-tribal effort to end the destruction and looting of this intensely spiritual and culturally significant area. We call on your administration to help heal these ancestral lands, while leaving a lasting legacy for all Americans.

Sincerely,



Theresa Pierno
President and CEO

CC: The Honorable Sally Jewell, Secretary of the Interior
The Honorable Tom Vilsack, Secretary of Agriculture
The Honorable Christina W. Goldfuss, Managing Director,
Council on Environmental Quality



**NPCA Position on HR 5780:
The Utah Public Lands Initiative
September 14, 2016 Hearing**

September 12, 2016

Dear Members of the House Natural Resources Committee,

Since 1919, the National Parks Conservation Association (NPCA) has been the leading public voice in protecting and enhancing America's National Park System. On behalf of our more than one million members and supporters nationwide, and in advance of the Subcommittee on Federal Land's upcoming September 14th hearing, I write to urge members of the subcommittee to oppose Chairman Rob Bishop and Congressman Jason Chaffetz's Utah Public Lands Initiative (H.R. 5780).

For over three years, the National Parks Conservation Association (NPCA) has been a stakeholder in the Utah Public Lands Initiative (PLI). We encouraged an open, transparent process for determining land designations based on mutual trust and a commitment to finding common ground, where possible. NPCA's priorities in the process were to protect and conserve the unique ecological, cultural and recreational values of our national park units while also considering the larger shared landscape. This includes potentially expanding protections around several national park units as well as ensuring that activities on adjacent lands do not impair the air, water, sounds, night skies, views and other values that the National Park Service (NPS) is charged with protecting. Throughout the PLI process, NPCA's goal was to work toward legislation that would protect eastern Utah's magnificent landscape, while allowing for a variety of recreational opportunities, appropriate development, and robust local and state economies.

After closely examining provisions in the legislation, NPCA cannot support H.R. 5780 because it would result in a step backwards for conservation in the management of the national park units and the larger shared landscape. In addition, the bill includes language that contradicts and undermines key federal laws including the Wilderness Act, Clean Air Act, and National Environmental Policy Act. While we are pleased to see our priority of expanding Arches National Park included in the bill, we oppose many more provisions of the bill that do not

support parks or their adjacent landscapes, and therefore do not consider H.R. 5780 a balanced approach to resolving Utah's public land issues.

The bill ignores much of the progress made over the past three years and the collaborative approach taken in several of the state's counties. Overall, the bill is a missed opportunity to protect and preserve some of America's greatest national parks and their surrounding public lands. Instead, H.R. 5780 would subject much of eastern Utah's public lands to excessive development and off-road vehicle use, while weakening environmental protections. Even the title of the bill is of concern, "*To provide greater conservation, recreation, economic development, and local management of federal lands in Utah, and for other purposes.*" These are federal lands and while local input and participation in management of these landscapes is important, these are public lands that belong to all Americans.

Below we outline the provisions of the bill which NPCA opposes due to potential impacts to our national parks, their shared landscapes, and the enjoyment of all Americans.

Division A: Conservation

Title 1: Wilderness

Although we support H.R. 5780 the designation of wilderness in Arches and Canyonlands National Parks, Dinosaur National Monument and Glen Canyon National Recreation Area in H.R. 5780, the wilderness boundaries are problematic; they do not include all of the recommended acreage in Arches, but do include other developed areas within the parks, which do not qualify as wilderness. In addition, the wilderness management language in the bill contradicts the Wilderness Act and undermines the authority of the NPS to fully manage wilderness resources in the parks. As written, H.R. 5780 would actually offer less protection for lands inside national parks because nearly all of the land designated as wilderness in the bill that is inside the parks is already recommended wilderness and currently managed by the NPS in a manner consistent with the Wilderness Act. We are extremely concerned about the provisions in the wilderness administration language in H.R. 5780 which limit the land manager's ability and authority to appropriately manage the natural and cultural resources. All designated wilderness should be managed consistent with the Wilderness Act without stipulations and exemptions attached.

NPCA strongly opposes any effort to reclassify Arches and Canyonlands national parks from Class I to Class II airshed status as defined under the Clean Air Act. H.R. 5780 attempts to clarify exceptions to prohibiting the designation of Class I airsheds in new wilderness, but is not clear to which areas the clarification applies (p. 25, line 23-25).

Title II: National Conservation Areas

NPCA is very supportive of protecting landscapes adjacent to national park units and could be supportive of the National Conservation Area (NCA) designation if crafted with strong

conservation language. However, the NCA designations included in H.R. 5780 are in name only and do not provide for clear and meaningful protection of the shared landscapes, which in many cases are adjacent to NPS managed areas. The management language for the NCAs contradicts the Federal Land Policy and Management Act, National Environmental Policy Act, and will limit the ability of land managers to adequately manage the resources they are intended to protect.

Although the Indian Creek NCA incorporates a portion of NPCA's long-standing Canyonlands Completion proposal (which would expand the Canyonlands National Park boundary beyond the natural erosional boundary of the Wingate Cliffs), the NCA proposed in H.R. 5780 would not adequately protect the Canyonlands basin and its many natural and cultural resources. Instead, the NCA would allow for "historic uses", including grazing and off-road vehicle use, which can be incompatible with adjacent NPS management and threaten park resources. This does not represent a significant step forward in conservation.

Title III: Arches National Park Expansion

NPCA advocated for and supports expanding the boundaries of Arches National Park. However, H.R. 5780 also designates Wilderness within the expansion area with numerous cherry stemmed vehicle routes. These cherry-stems lessen the conservation value of park landscapes and the minor additions to the park; these also were not discussed with the conservation community.

Division B: Innovative Land Management, Recreation and Economic Development

Title I: School Trust Land Consolidations

NPCA has concerns with the large areas where SITLA would trade into federal lands west of Arches National Park and on Hatch Point east of Canyonlands National Park. These areas are all within the Moab Master Leasing Plan boundary, which is a nearly final, stakeholder driven process which looked closely at where and how oil, gas and potash leasing should take place. SITLA land within this area would not be managed under the provisions of the MLP and presents significant threats to park resources if developed for oil, gas or potash. In addition, the bill excludes the trade of a SITLA parcel adjacent to the eastern boundary of Natural Bridges National Monument. NPCA has consistently advocated for a trade of this specific parcel through the PLI process since incompatible use or development of the parcel would have significant impacts on park resources, including its International Dark Sky status.

Title VII: Recreation Zones & Title IX Red Rock Country Off Highway Vehicle Trail

Both of these titles allow for off-road vehicle use and the development of new off-highway vehicle trails adjacent to national park units. This could potentially lead to incursions in the park and damage to park resources. In H.R. 5780 the Klondike Recreation Zone is adjacent to the

western boundary of Arches National Park and is established “to promote outdoor recreation (including off-highway vehicle use, mountain biking, rock climbing, and hiking), provide for the construction of new non-off-highway vehicle trails, and to prevent future mineral development” (P. 162). The Red Rock Country Off-Highway Vehicle Trail allows for the development of a new trail linking up several communities in southeastern Utah near Arches and Canyonlands national parks. However, it is not clear through H.R. 5780 where the routes would be located in relationship to the parks. If sited too close to park boundaries, there could be visual impacts and potential incursions into the parks. Encouraging more off-road vehicle use adjacent to Arches and Canyonlands National Parks could create increased dust, noise, and diminished air quality. This, in turn would impact the dark night skies, visibility, natural sounds, viewsheds, and overall visitor experience of millions of people to these parks and their adjacent public lands.

Title XII: Long Term Energy Development Certainty in Utah

This title hands over authority for expedited energy development on public lands within the six PLI participating counties to the state of Utah. The language of H.R. 5780 requires the state to follow the process of federal law, but not the substance. This action could lead to a significant increase in energy development on the landscapes surrounding our national parks, without regard for the impacts on air quality, natural and cultural resources, and the outdoor recreation economy. Opening up the landscapes, particularly at the scale offered through H.R. 5780, adjacent to national parks to energy development with no regard for impacts on the natural and cultural resources or the experience of millions of people who flock to this part of Utah, would be a huge setback for conservation, the State of Utah, and all Americans who treasure our public lands.

In addition, NPCA has been a strong proponent of the Bureau of Land Management’s Master Leasing Plans as an important tool that can more effectively create certainty on the Utah landscape for all sides – whether for conservation, recreational use, or energy development. H.R. 5780 effectively eliminates the development and implementation of Master Leasing Plans by the BLM within the participating PLI counties and will nullify years of cooperative efforts between land managers and local stakeholders who have been working to determine where energy development, recreation and conservation are most appropriate on the landscape around Arches and Canyonlands National Parks. This action will also ensure that other national park units in the area do not receive a similar level of focused planning for potential energy development on the adjacent landscape.

Title XII: Long-Term Travel Management Certainty

This title grants right of ways, in perpetuity, for all paved Class B roads claimed by the six PLI participating counties to the State of Utah. This includes paved entrance roads leading up to and within the Island in the Sky and Needles Districts of Canyonlands. It also gives right of ways to Uintah County of all claimed Class D roads in the county. This can include cowpaths, overgrown two-tracks and routes that have been closed by the BLM and NPS in Uintah County. It also allows the State of Utah to continue litigation for other claims not included in this legislation.

NPCA's position has been consistent —the counties and state do not have legitimate claims to the roads, paths and trails inside the national parks. Their management by the National Park Service is critical to achieve the flow and volume of visitors into the parks enabling them to meet goals for recreational access and long-term resource protection. In addition, these controversial, permanent rights-of-ways flout current laws and policies governing RS2477 claims and would encourage off-road vehicle use on federal lands where it does not currently occur.

Title XIII: Long Term Grazing Certainty

This title, requiring that grazing on public land within seven Utah counties continue at current levels, “except for cases of extreme range conditions where water and forage is not available,” would limit public land managers’ ability to manage grazing and the significant impacts it can have on natural and cultural resources. This includes grazing inside Dinosaur National Monument and within the Arches National Park expansion. This title also undermines the National Forest Management Act, National Environmental Policy Act, Federal Land Policy and Management Act and Endangered Species Act.

In addition, Section 1303 of this title appears to ensure public land grazing outside the seven Utah counties engaged in the PLI: “this title shall ensure public grazing lands, including areas outside the areas designated in this title, not be reduced below current permitted levels, except for cases of extreme range conditions where water and forage is not available” (P. 197). NPCA strongly opposes any type of provision allowing for existing grazing levels on a statewide basis. This provision impacts other park units including Glen Canyon NRA and Capitol Reef National Park.

Division C: Local Participation

Title I: Local Participation and Planning

Creating an unbalanced, statewide advisory committee to advise the Secretaries of the Interior and Agriculture on the implementation of the PLI would complicate and bias implementation of this legislation relating to public lands owned by all Americans.

Division D: Bears Ears National Conservation Area

This title creates an 860,000-acre Bears Ears National Conservation Area in San Juan County. Similar to the other NCA's designated in H.R. 5780, the management language for the Bears Ears NCA contradicts the Federal Land Policy and Management Act and National Environmental Policy Act and undermines the authority of public land managers to appropriately protect NCA cultural and natural resources. Unlike the current Inter-tribal Coalition's proposal for a Bears Ears National Monument, an NCA would not effectively provide for the healing of the sacred, ancestral landscape, nor for a strong Native American voice in management of the conservation area. It is also not clear whether Natural Bridges National

Monument would or would not be incorporated into the Bears Ears NCA. The NCA map for H.R. 5780 indicates that Natural Bridges National Monument would be included in the Bears Ears NCA; if so, NPCA advocates that the monument continues to be managed by the National Park Service.

Conclusion

While we believe the PLI process led to valuable discussions among diverse stakeholders in some counties, and even the identification of areas of unexpected common ground, the resulting legislation represented in H.R. 5780 does not reflect the progress made during over three years of engagement. Instead, all semblance of compromise is overshadowed by broad negative policy provisions, some that were not shared or discussed with stakeholders, and others that NPCA identified as nonviable compromises from the beginning of the PLI process. While NPCA remains committed to pursuing all genuine opportunities to achieve the protection the amazing, dynamic landscapes of Eastern Utah deserve, we do not believe the PLI represents a conservation gain for these public lands. We urge you to also oppose H.R. 5780.

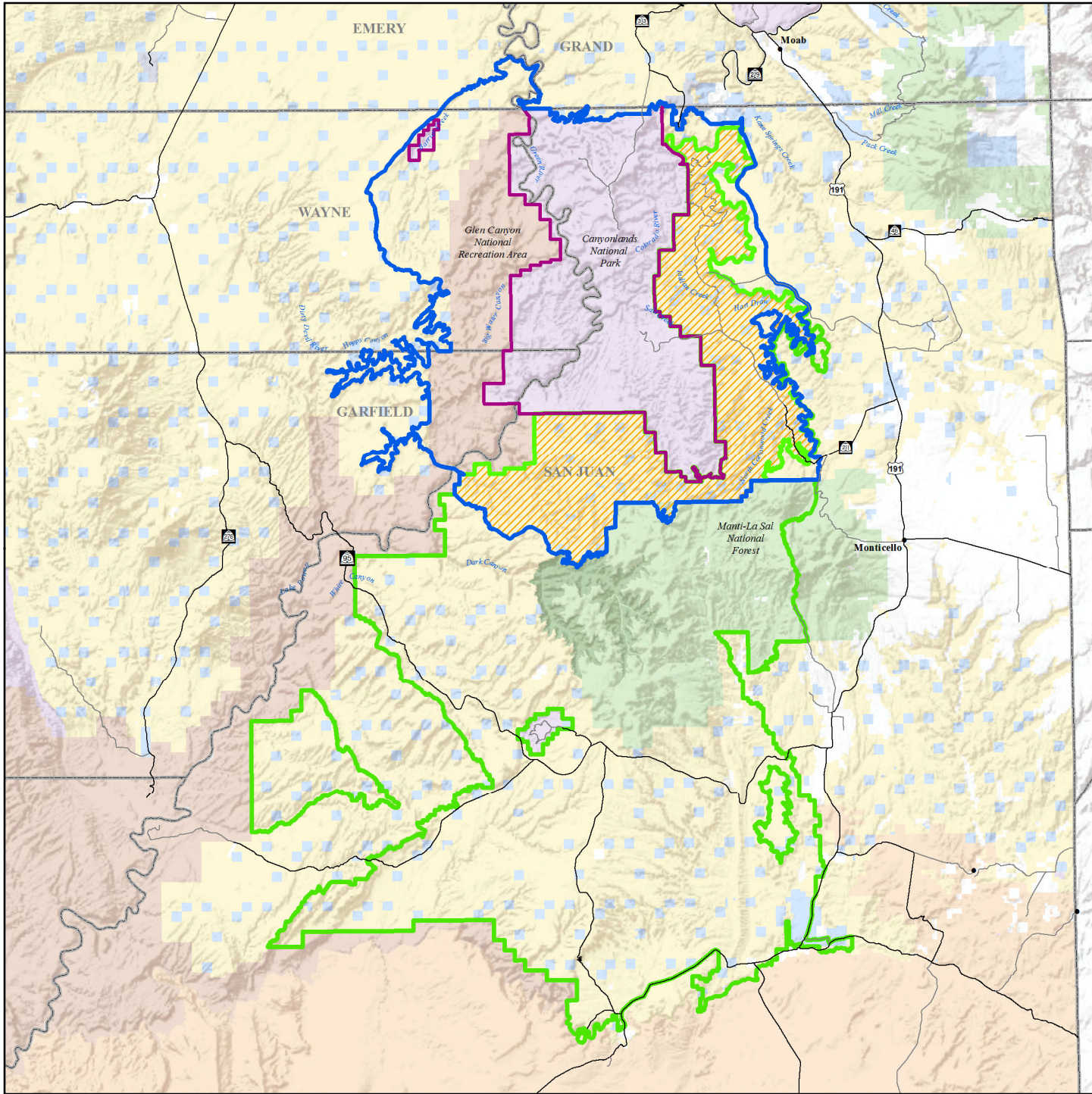
Thank you for your consideration of our comments.

Sincerely,

Kristen Brengel
Vice President, Government Affairs

Appendix F

Map of NPCA Canyonlands Completion proposal overlay with Bears Ears

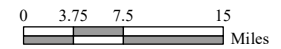
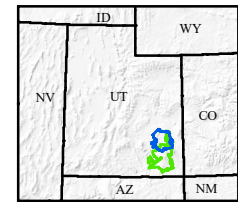


Bears Ears National Monument Overlay with Canyonlands National Park Completion Proposal

- Bears Ears NM - 1,351,849 Acres
- Overlap Area - 474,908 Acres
- Canyonlands National Park Completion Proposal - 942,892 Acres
- Current Canyonlands National Park Boundary - 337,598 Acres

- State Wildlife Management Area
- State Trust Lands
- State Parks and Recreation
- Bureau of Land Management
- National Parks, Monuments & Historic Sites
- National Forest
- Private

- State or U.S. Highway
- Other Road
- River, Stream or Wash



1:915,000
NAD 1983 UTM Zone 12N



Appendix G

450 Group Letter of Support

President Donald J. Trump
The White House
1600 Pennsylvania Ave NW
Washington, DC

Secretary Ryan Zinke
U.S. Department of the Interior
1849 C St. NW
Washington, DC

Secretary Wilbur Ross
U.S. Department of Commerce
1401 Constitution Ave., NW,
Washington, DC

RE: Efforts to Repeal or Undermine Protections for Parks and Monuments

May 2, 2017

Dear President Trump, Secretary Zinke, and Secretary Ross,

On behalf of more than 450 undersigned organizations and our millions of members across the country, we are writing to express our deep concern with your recent Executive Orders and our unified opposition to any efforts to remove or decrease protections for any national monuments.

Since its enactment over a hundred years ago, the Antiquities Act has been one of our nation's most critical conservation tools for preserving our nation's most important public lands and waters. Our national parks and monuments and other protected public lands and waters unite all Americans by protecting our shared American heritage for future generations to enjoy. The sheer diversity of historic, cultural, and natural treasures that have been protected by the Antiquities Act is the reason why hundreds of groups representing sportsmen, cultural heritage organizations, evangelicals, conservation, recreation businesses, historic preservation, social justice, and many others all oppose efforts to undermine our national monuments and view an attack on any one national monument as an attack on them all.

Whether focused on the Bears Ears National Monument and the over 100,000 irreplaceable cultural and archaeological resources protected in this landscape or the Pacific Remote Islands Marine National Monument which protected unique and pristine ocean habitats and marine life, or any other monument that protects our cultural, historic and natural treasures, an attempt to undermine protections for these uniquely American places would not only rob the American people of our shared heritage but establish a dangerous precedent that we can no longer trust that park or monument can be considered fully safeguarded for future generations.

The American people, including the millions of members we represent, overwhelmingly oppose efforts to roll back protections for the parks, monuments, marine sanctuaries and other public lands and waters they love. According to Colorado College's Conservation in the West Poll, 80% of western voters support keeping existing national monuments protections in place while only 13% of western voters supported removing protections for existing monuments. This poll reinforces other surveys that document widespread public opposition to congressional attacks on new parks. In a December 2014 Hart Research Poll, 90% of Americans support the permanent protection of some public lands, monuments, wildlife refuges and wilderness. Americans want more protected public lands and waters, not less!

We are concerned that this review is a pretense to advance efforts to undermine or strip protections for current national monuments. This review and the implied effort to roll back our monuments worries those who love our national monuments and the communities that rely on them to power their local economies. Just this week the Outdoor Industry Association unveiled a study that shows the outdoor recreation economy generates \$887 billion in economic activity and is responsible for 7.6 million jobs. Protected public lands and waters are the backbone of this economy and any effort to introduce uncertainty by implying that the national monuments that drive local economies may not be permanent will hurt those gateway communities and businesses that depend on them.

We believe that any review that is rigorously fact based, includes robust public input and is cognizant of the resources on the ground will undoubtedly show that our National Monuments are beyond deserving of their status and protections and should be safeguarded in their current states for future generations. We encourage the Department of the Interior to listen to the American people and reflect deeply on the values and resources they are sworn to protect and believe that this can lead to only one recommendation – that our national monuments are treasures worthy of the utmost protection.

Our organizations and the diverse array of members and interests we represent are united in our support for our national parks and monuments. Our national monuments protect our uniquely American heritage and we stand with the overwhelming majority of our fellow Americans in defending them from efforts to undermine protections for parks and monuments. We urge you to refrain from any effort to shrink, repeal or otherwise undermine any National Monuments.

Thank you for your consideration.

Sincerely,

350.org
ACORN Partners in Education
Action Tennessee
African American Nature and Parks Experience
Agua Fria Open Space Alliance
Alabama Hills Stewardship Group
Alaska Wilderness League
Amah Mutsun Land Trust
Amah Mutsun Tribal Band
Armargosa Conservancy
American Alpine Club
American Association of Independent & Minority Enterprises
American Bird Conservancy
American Rivers
American Sustainable Business Council
Amigos Bravos
Anchorage Audubon Society
Appalachian Mountain Club
Applegate Neighborhood Network
Aquarium of the Bay

Archeology Southwest
Arizona Conservation Partners
Arizona Joshua Tree Forest
Arizona Wilderness Coalition
ARTFARM
Asian Pacific Policy & Planning Council (A3PCON)
Association of Zoos & Aquariums
Audubon Society
Audubon Society Alaska
Audubon Society Bedford
Audubon Society Bronx River – Sound Shore
Audubon Society Buffalo
Audubon Society California
Audubon Society Capital Region
Audubon Society Connecticut
Audubon Society Delaware-Otsego
Audubon Society Four Harbors
Audubon Society Genesee Valley
Audubon Society Grand Valley
Audubon Society Great Lakes

Audubon Society Great Salt Lake
Audubon Society New York
Audubon Society North Shore
Audubon Society Northern Catskills
Audubon Society Rhode Island
Audubon Society San Bernardino Valley
Audubon Society Sangre de Cristo
Audubon Society Sierra Foothills
Audubon Society Vermont
Audubon Society Washington
Back Country Horsemen of New Mexico
Bad River Watershed Association
Basin and Range Watch
Bay Area Coalition for Headwaters
Bielenberg Historic Pullman House Foundation
Birds of Prey Partnership
Black Metropolis National Heritage Area Commission
Blue Ridge Env. Def. League - Watauga Watershed Alliance
Bodie Hills Conservation Partnership
Braided River
Brigham Young University Earth Stewardship
Bronzeville Historical Society
Business for Water Stewardship
Cabrillo Marine Aquarium
California Coastkeeper Alliance
California Native Plant Society
California ReLeaf
California State Parks Foundation
California Wilderness Coalition
California Wilderness Project
Californians for Western Wilderness
Calumet Collaborative
Calumet Heritage Partnership
CalWild
Carrizo Plain Conservancy
Cascade Forest Conservancy
Center for American Progress
Center for Aquatic Sciences at Adventure Aquarium
Center for Biological Diversity
Center for Diversity and the Environment
Center for Sierra Nevada Conservation
Central Colorado Wilderness Coalition
Central Oregon Bitterbrush Broads
Central Sierra Environmental Resource Center

Central Westchester Audubon Society
Cesar Chavez Foundation
Chaffee County, Colorado
Chemung Valley Audubon Society
Cherokee Forest Voices
China Ranch Date Farm
Christians For The Mountains
Circle Mountain Biological Consultants, Inc.
Clean Water Action
Coalition for Sonoran Desert Protection
Coalition to Protect America's National Parks
Coloradans for Utah Wilderness
Colorado Canyons Association
Colorado Mountain Club
Colorado Native Plant Society
Colorado Sierra Club
Computer Sprout
Conejos Clean Water
Connecticut Fund for the Environment
Connecticut Land Conservation Council
Connecticut Ornithological Association
Conservation Alabama
Conservation Colorado
Conservation Council for Hawai'i
Conservation Lands Foundation
Conservation Law Foundation
Conservation Southwest Utah
Conservation Voters for Idaho
Conservation Voters New Mexico
Conservation Voters New Mexico Education Fund
Conservatives for Responsible Stewardship
Conserve Southwest Utah
Council of Mexican Federations (COFEM)
Craighead Institute
Crow Canyon Archaeological Center
Defenders of Wildlife
Diverse Environmental Leaders (DEL) National Speakers Bureau
Dolores River Boating Advocates
Earth Island Institute
Earth Ministry
EarthEcho International
Earthjustice
Earthworks
East West Printing, Inc.

EcoFlight
Eight Rivers Council
Elders Rising
Ellen's Homemade Ice Cream
Environment America
Environment Arizona
Environment California
Environment Colorado
Environment Connecticut
Environment Florida
Environment Georgia
Environment Illinois
Environment Iowa
Environment Maine
Environment Maryland
Environment Massachusetts
Environment Michigan
Environment Minnesota
Environment Missouri
Environment Montana
Environment Nevada
Environment New Hampshire
Environment New Jersey
Environment New Mexico
Environment New York
Environment North Carolina
Environment Ohio
Environment Oregon
Environment Rhode Island
Environment Texas
Environment Virginia
Environment Washington
Environmental Justice Coalition for Water
Environmental Law and Policy Center
Eric Larsen Explore
Evergreen Mountain Bike
Eyak Preservation Council
Farmington River Watershed Association
Federation of Western Outdoor Clubs
First Unitarian Church, Salt Lake City
Forest Issues Group
Fort Ord Recreation Trails
Fort Stanton Cave Study Project
Friends and Neighbors of the Deschutes Canyon Area

Friends of Agua Fria National Monument
Friends of Alaska National Wildlife Refuges
Friends of Basin & Range
Friends of Big Morongo Canyon Preserve
Friends of Browns Canyon
Friends of Cascade Siskiyou National Monument
Friends of Cedar Mesa
Friends of Gold Butte
Friends of Ironwood Forest
Friends of Nevada Wilderness
Friends of Oregon Badlands Wilderness
Friends of Organ Mountains - Desert Peaks
Friends of Peru State Forest
Friends of Point Arena - Stornetta Lands
Friends of Pompeys Pillar
Friends of Sloan Canyon
Friends of Sonoran Desert National Monument
Friends of the Bitterroot
Friends of the Cheat
Friends of the Cliffs
Friends of the Desert Mountains
Friends of the Earth
Friends of the Forest Preserves
Friends of the Inyo
Friends of the Kalmiopsis
Friends of the Missouri Breaks Monument
Friends of the Owyhees
Friends of the Sonoran Desert
Friends of the Yampa
Gathering Waters
Geos Institute
GLSEN
Grand Canyon Trust
Grand Canyon Wildlands Council
Grand Staircase Escalante Partners
Great Old Broads for Wilderness
Great Old Broads for Wilderness - Bozeman Broadband
Great Old Broads for Wilderness - Footsteps of Leopold Broadband
Great Old Broads for Wilderness - Grand Junction Chapter
Great Old Broads for Wilderness - Great Basin Eastern Nevada Broadband
Great Old Broads for Wilderness - Northern San Juan Broadband
Great Old Broads for Wilderness - Reno Broadband
Great Old Broads for Wilderness - Roaring Fork Broadband
Great Old Broads for Wilderness - Teton Valley Chapter

Great Old Broads for Wilderness - Wasatch Broadband
Great Old Broads for Wilderness - Willamette Valley
Greater Yellowstone Coalition
Greenbelt Alliance
GreenLatinos
Greenpeace
Hanalei Watershed Hui
Hawai'i Wildlife Fund
Hawaii Fishing & Boating Association
Hells Canyon Preservation Council
High Country Conservation Advocates
Hills For Everyone
Hispanic Access Foundation
Hispanic Federation
Hispanics Enjoying Camping, Hunting, and the Outdoors
Historic Pullman Foundation
Hoosier Environmental Council
Housatonic Valley Association
Hui Ho'omalua i ka 'Aina
Human Rights Campaign
Huntington-Oyster Bay Audubon
Huron River Watershed Council
Idaho Conservation League
Indivisible Ogden
Institute for a Progressive Nevada
International Dark-Sky Association: High Desert Region
International Fund for Animal Welfare
Islanders for the San Juan Islands National Monument
Izaak Walton League of America, Headwaters Chapter
Joshua Tree Astronomy Arts Theater
Joshua Tree National Park Association
KAHEA-The Hawaiian-Environmental Alliance
Kanawha Forest Coalition
Kaua'i Albatross Network
Keep the Woods
Kentucky Heartwood
Klamath-Siskiyou Wildlands Center
Land Trust of Santa Cruz County
Landmarks Illinois
Las Cruces Green Chamber of Commerce
Lassen Forest Preservation Group
League of Conservation Voters
Lee International
Lider Engineering

Loo Wit Group
Los Angeles Waterkeeper
Los Padres ForestWatch
Lost Coast Interpretive Association
Loxahatchee River Historical Society
Lutheran Office of Public Policy - California
Maine Conservation Voters
Maine Public Health Association
Maine Rivers
Marine Conservation Institute
Mattole Restoration Council
Mendocino Land Trust
Michael Gordon Photography
Milwaukee River Keeper
Mission Blue
Mississippi Park Connection
Mojave Desert Land Trust
Mojave National Preserve Conservancy
Mono Lake Committee
Montana Conservation Voters Education Fund
Montana Wilderness Association
Montana Wildlife Federation
Mormon Environmental Stewardship Alliance
Mountain Lakes Preservation Alliance
Mystic Aquarium
NAACP
National Association of Tribal Historic Preservation Officers
National Center for Transgender Equality
National Ocean Protection Coalition
National Parks Conservation Association
National Wildlife Refuge Association
Native Hawaiian Cultural Working Group
Natural Resources Council of Maine
Natural Resources Defense Council
Natural Resources Defense Council - California
Nature Abounds
Nevada Conservation League
New Hampshire Audubon
New Hampshire Lakes Association
New Hampshire Rivers Council
New Mexico Friends of Utah Wilderness
New Mexico Sportsmen
New Mexico Wilderness Alliance
New Mexico Wildlife Federation

North Carolina League of Conservation Voters
Northern Alaska Environmental Center
Northern Initiatives
Northwest Indiana Restoration Monitoring Inventory
Ocean Conservancy
Ocean Conservation Research
Oceana
Ohio Environmental Council
Ohio Valley Environmental Coalition
Onondaga Audubon
Openlands
Orange County Audubon Society
Oregon League of Conservation Voters
Oregon Natural Desert Association
Oregon Wild
ORV Watch Kern County
OUT There Adventures
Outdoor Afro
Outdoor Project
Outside Las Vegas Foundation
P3 Utah
Papahānaumokuākea Native Hawaiian Cultural Wkg. Group
Partnership for Responsible Business
Partnership for the National Trails System
Patagonia Area Resource Alliance
Patagonia, Inc
Pathways - Wildlife Corridors of New Mexico
Peaceful Uprising
Penn Center
PennEnvironment
Point Arena Lighthouse Keepers, Inc.
Point Defiance Zoo and Aquarium
Praxis Project
Pride Outside
Project Bobcat
Protection of New Hampshire Forests
Public Citizen
Pullman Arts
Pullman Civic Organization
Putnam Highlands Audubon Society
Quaker Voice
Quiet Use Coalition
Rio Grande del Norte
Rivers & Birds

Rivers Alliance
Rocky Mountain Wild
Salt Lake Indivisible
San Gabriel Mountains Forever
San Geronio Wilderness Association
San Juan Citizens Alliance
San Luis Valley Ecosystem Council
Sanctuary Forest
Santa Fe Green Chamber of Commerce
Save The Bay
Save the Sound
Scenic America
Seattle Aquarium
Sempervirens Fund
Shedd Aquarium
Sheep Mountain Alliance
Shoshone Village
Sierra Club
Sierra Club - Hawai'i
Sierra Club - Military Outdoors
Sierra Club - Pennsylvania Chapter
Sierra Club - Tennessee Chapter
Sierra Club - Watauga
Sierra Nevada Alliance
Sky Island Alliance
Soda Mountain Wilderness Council
Soul River Inc.
Southeast Environmental Task Force
Southern Adirondack Audubon Society
Southern California Desert Video Astronomers
Southern Christian Coalition
Southern Utah Wilderness Alliance
Southwest Environmental Center
St. Croix River Association
Surfrider Foundation
Swan View Coalition
Tennessee Citizens for Wilderness Planning
Tennessee Wild
Territory Run Co.
The Bay Institute
The California Chaparral Institute
The City Project
The Dignitas Agency
The Friends of Sparta Mountain

The LOST FISH Coalition
The Mountain Pact
The National Aquarium
The Ocean Project
The Piedmont Environmental Council
The Trail Posse
The Wilderness Society
Torrey House Press
Transition Habitat Conservancy
Trinidad Coastal Land Trust
Trout Unlimited, Illinois Chapter
Trust for Public Land
Tucson Great Old Broads for Wilderness
Tuleyome
Tuolumne River Trust
Uplift Climate
Upper Gila Watershed Alliance
Utah Dine Bikeyah
Utah Indivisible
Utah Interfaith Power & Light
Utah Professional Archaeological Council
Utah Rivers Council
Utah State Society and Natural Resources
Utahans Speak Out
Vermont Conservation Voters
Vermont Natural Resources Council
Vermont Public Interest Research Group
Vet Voice Foundation
Voices Verdes
Voyageurs National Park Association
Waitt Foundation
Waitt Institute
Wasatch Mountain Club
Washington Conservation Voters
Washington Environmental Council
Washington Trails Association
Washington Wild
WasteWater Education
West Virginia Highlands Conservancy
West Virginia Land Trust
West Virginia Rivers Coalition
Western Colorado Congress
Western Environmental Law Center
Western Resource Advocates

Western Slope Conservation Center
Western Watersheds Project
Western Wildlife Conservancy
Wild South
Wild Utah Project
Wild Virginia
WILDCOAST
Wildearth Guardians
Wilderness Workshop
WildLands Defense
Wildlands Network
Wildlife Conservation Advocacy Southwest
Winter Wildlands Alliance
Wisconsin Environment
Wisconsin League of Conservation Voters
Wisconsin Wildlife Federation
Wyoming Outdoor Council
Yellowstone to Uintas Connection